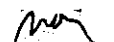


14
Wynn Resorts, Limited
Wynn PA, Inc.

Appendix 11B – Annual or quarterly filings under the laws
of another country for the past five years

Does Not Apply

Initials



Wynn Resorts, Limited
Wynn PA, Inc.

Appendix 12 – Last quarterly financial statement

Refer to Appendices 10 & 11

Initials phm

WYNN RESORTS LTD (WYNN)

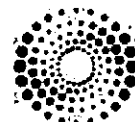
10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filed on 11/09/2012

Filed Period 09/30/2012

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2012

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File No. 000-50028

WYNN RESORTS, LIMITED

(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction of
incorporation or organization)

46-0484987
(I.R.S. Employer
Identification No.)

3131 Las Vegas Boulevard South—Las Vegas, Nevada 89109
(Address of principal executive offices) (Zip Code)

(702) 770-7555
(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days: Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding at October 31, 2012
Common stock, \$0.01 par value	100,581,636

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Part I – FINANCIAL INFORMATION

Item 1. Financial Statements

WYNN RESORTS, LIMITED AND SUBSIDIARIES CONDENSED CONSOLIDATED BALANCE SHEETS (amounts in thousands, except share data) (unaudited)

	September 30, 2012	December 31, 2011
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 2,330,937	\$ 1,262,587
Investment securities	198,897	122,066
Receivables, net	213,322	238,490
Inventories	65,531	72,061
Prepaid expenses and other	32,597	31,248
Total current assets	2,841,284	1,726,452
Property and equipment, net	4,697,692	4,865,332
Restricted cash and investment securities	193,206	91,501
Intangibles, net	32,410	35,751
Deferred financing costs, net	73,658	50,372
Deposits and other assets	113,883	125,712
Investment in unconsolidated affiliates	4,094	4,376
Total assets	\$ 7,956,227	\$ 6,899,496
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts and construction payables	\$ 186,645	\$ 171,608
Current portion of long-term debt	1,400	407,934
Current portion of land concession obligation	27,248	13,425
Customer deposits	595,243	576,011
Gaming taxes payable	169,282	177,504
Accrued compensation and benefits	96,655	78,717
Accrued interest	71,783	49,989
Other accrued liabilities	49,939	94,642
Construction retention	2,346	4,471
Deferred income taxes, net	3,536	3,575
Income taxes payable	1,480	2,017
Total current liabilities	1,205,557	1,579,893
Long-term debt	5,781,471	2,809,785
Land concession obligation	90,303	103,854
Other long-term liabilities	122,878	128,216
Deferred income taxes, net	36,718	54,294
Total liabilities	7,236,927	4,676,042
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Preferred stock, par value \$0.01; 40,000,000 shares authorized; zero shares issued and outstanding	—	—
Common stock, par value \$0.01; 400,000,000 shares authorized; 113,400,866 and 137,937,088 shares issued; 100,537,136 and 125,080,998 shares outstanding	1,134	1,379
Treasury stock, at cost; 12,863,730 and 12,856,090 shares	(1,127,947)	(1,127,036)
Additional paid-in capital	1,257,958	3,177,471
Accumulated other comprehensive income	3,625	840
Retained earnings	276,565	36,368
Total Wynn Resorts, Limited stockholders' equity	411,335	2,089,022
Noncontrolling interest	307,965	134,432
Total equity	719,300	2,223,454
Total liabilities and stockholders' equity	\$ 7,956,227	\$ 6,899,496

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(amounts in thousands, except per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Operating revenues:				
Casino	\$ 1,012,841	\$ 1,020,205	\$ 3,015,510	\$ 3,108,553
Rooms	119,635	120,113	362,018	355,492
Food and beverage	156,568	142,891	452,845	419,542
Entertainment, retail and other	101,087	105,530	308,398	306,900
Gross revenues	1,390,131	1,388,739	4,138,771	4,190,487
Less: promotional allowances	(91,636)	(90,435)	(273,571)	(264,558)
Net revenues	1,298,495	1,298,304	3,865,200	3,925,929
Operating costs and expenses:				
Casino	653,863	679,479	1,974,207	1,988,339
Rooms	31,944	31,135	95,193	93,594
Food and beverage	80,652	73,250	235,570	214,203
Entertainment, retail and other	46,881	52,152	144,647	162,591
General and administrative	115,785	107,935	321,512	287,508
Provision for doubtful accounts	5,283	4,324	6,068	18,269
Depreciation and amortization	94,274	100,522	280,142	303,921
Property charges and other	22,721	9,662	36,547	124,070
Total operating costs and expenses	1,051,403	1,058,459	3,093,886	3,192,495
Operating income	247,092	239,845	771,314	733,434
Other income (expense):				
Interest income	3,759	2,663	7,807	4,639
Interest expense, net of capitalized interest	(75,082)	(57,462)	(211,017)	(173,956)
Increase in swap fair value	—	4,118	4,930	11,483
Loss on extinguishment of debt	(19,663)	—	(24,491)	—
Equity in income from unconsolidated affiliates	190	376	911	1,242
Other	1,249	(85)	936	1,616
Other income (expense), net	(89,547)	(50,390)	(220,924)	(154,976)
Income before income taxes	157,545	189,455	550,390	578,458
Benefit (provision) for income taxes	7,626	(4,270)	12,483	(11,607)
Net income	165,171	185,185	562,873	566,851
Less: Net income attributable to noncontrolling interest	(53,136)	(58,122)	(172,210)	(143,953)
Net income attributable to Wynn Resorts, Limited	\$ 112,035	\$ 127,063	\$ 390,663	\$ 422,898
Basic and diluted income per common share:				
Net income attributable to Wynn Resorts, Limited:				
Basic	\$ 1.12	\$ 1.02	\$ 3.75	\$ 3.41
Diluted	\$ 1.11	\$ 1.01	\$ 3.71	\$ 3.37
Weighted average common shares outstanding:				
Basic	99,871	124,176	104,104	123,969
Diluted	100,892	125,860	105,291	125,675
Dividends declared per common share:	\$ 0.50	\$ 0.50	\$ 1.50	\$ 1.00

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(amounts in thousands)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Net income	\$ 165,171	\$ 185,185	\$ 562,873	\$ 566,851
Other comprehensive income:				
Foreign currency translation adjustments, net of tax	1,263	(2,433)	2,006	(2,389)
Unrealized gain (loss) on available-for-sale securities, net of tax	784	(2,619)	1,709	(2,619)
Total comprehensive income	167,218	180,133	566,588	561,843
Less: Comprehensive income attributable to noncontrolling interest	(53,654)	(56,858)	(173,140)	(142,701)
Comprehensive income attributable to Wynn Resorts, Limited	\$ 113,564	\$ 123,275	\$ 393,448	\$ 419,142

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(amounts in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2012	2011
Cash flows from operating activities:		
Net income	\$ 562,873	\$ 566,851
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	280,142	303,921
Deferred income taxes	(15,814)	10,081
Stock-based compensation	13,704	18,318
Excess tax benefits from stock-based compensation	(1,638)	(10,331)
Amortization and write-offs of deferred financing costs and other	18,834	15,016
Loss on extinguishment of debt	13,116	—
Provision for doubtful accounts	6,068	18,269
Property charges and other	35,049	97,150
Equity in income of unconsolidated affiliates, net of distributions	282	85
Increase in swap fair value	(4,930)	(11,483)
Increase (decrease) in cash from changes in:		
Receivables, net	16,896	(21,248)
Inventories and prepaid expenses and other	5,216	10,298
Accounts payable and accrued expenses	59,438	152,125
Net cash provided by operating activities	989,236	1,149,052
Cash flows from investing activities:		
Capital expenditures, net of construction payables and retention	(168,315)	(85,804)
Restricted cash and purchase of corporate debt securities	(297,781)	(281,628)
Proceeds from sale or maturity of corporate debt securities	118,168	37,712
Deposits and purchase of other assets	(3,753)	(34,848)
Proceeds from sale of equipment	551	310
Net cash used in investing activities	(351,130)	(364,258)
Cash flows from financing activities:		
Proceeds from exercise of stock options	1,227	21,029
Excess tax benefits from stock-based compensation	1,638	10,331
Dividends paid	(154,059)	(127,668)
Proceeds from issuance of long-term debt	1,648,598	—
Purchase of treasury stock	(911)	(6,859)
Principal payments on long-term debt	(1,022,108)	(163,910)
Interest rate swap settlement	(2,368)	—
Payments of financing costs	(44,491)	(58)
Net cash provided by (used in) financing activities	427,526	(267,135)
Effect of exchange rate on cash	2,718	(134)
Cash and cash equivalents:		
Increase in cash and cash equivalents	1,068,350	517,525
Balance, beginning of period	1,262,587	1,258,499
Balance, end of period	<u>\$ 2,330,937</u>	<u>\$ 1,776,024</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(amounts in thousands, except share data)
(unaudited)

	<u>Common stock</u>				Accumulated		Total		Total
	Shares	Par	Treasury	Additional	other	Retained	Wynn Resorts, Ltd.	Noncontrolling	stockholders'
	outstanding	value	stock	paid-in	comprehensive	earnings	equity	interest	equity
Balances, January 1, 2012	125,080,998	\$1,379	\$(1,127,036)	\$3,177,471	\$ 840	\$ 36,368	\$ 2,089,022	\$ 134,432	\$ 2,223,454
Stock redemption	(24,549,222)	(245)	—	(1,936,198)	—	—	(1,936,443)	—	(1,936,443)
Net income	—	—	—	—	—	390,663	390,663	172,210	562,873
Currency translation adjustment	—	—	—	—	1,450	—	1,450	556	2,006
Net unrealized gain on investments	—	—	—	—	1,335	—	1,335	374	1,709
Exercise of stock options	42,000	—	—	1,227	—	—	1,227	—	1,227
Cancellation of restricted stock	(29,000)	—	—	—	—	—	—	—	—
Purchase of treasury stock	(7,640)	—	(911)	—	—	—	(911)	—	(911)
Cash dividends	—	—	—	200	—	(150,466)	(150,266)	—	(150,266)
Excess tax benefits from stock-based compensation	—	—	—	1,801	—	—	1,801	—	1,801
Stock-based compensation	—	—	—	13,457	—	—	13,457	393	13,850
Balances, September 30, 2012	<u>100,537,136</u>	<u>\$1,134</u>	<u>\$(1,127,947)</u>	<u>\$ 1,257,958</u>	<u>\$ 3,625</u>	<u>\$ 276,565</u>	<u>\$ 411,335</u>	<u>\$ 307,965</u>	<u>\$ 719,300</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization and Basis of Presentation

Organization

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries, "Wynn Resorts" or the "Company"), was formed in June 2002 and completed an initial public offering of its common stock on October 25, 2002.

In June 2002, the Company's indirect subsidiary, Wynn Resorts (Macau), S.A. ("Wynn Macau, S.A."), entered into an agreement with the government of the Macau Special Administrative Region of the People's Republic of China ("Macau"), granting Wynn Macau, S.A. the right to construct and operate one or more casino gaming properties in Macau. Wynn Macau, S.A.'s first casino resort in Macau is hereinafter referred to as "Wynn Macau."

The Company currently owns and operates casino hotel resort properties in Las Vegas, Nevada and Macau. In Las Vegas, Nevada, the Company owns Wynn Las Vegas, which opened on April 28, 2005 and was expanded with the opening of Encore at Wynn Las Vegas on December 22, 2008 ("Wynn Las Vegas" or the "Las Vegas Operations"). In Macau, the Company owns Wynn Macau, which opened on September 6, 2006 and was expanded with the opening of Encore at Wynn Macau on April 21, 2010 ("Wynn Macau" or the "Macau Operations").

In October 2009, Wynn Macau, Limited, an indirect wholly owned subsidiary of the Company and the developer, owner and operator of Wynn Macau, listed its ordinary shares of common stock on The Stock Exchange of Hong Kong Limited. Through an initial public offering, including the over allotment, Wynn Macau, Limited sold 1,437,500,000 shares (27.7%) of its common stock.

Basis of Presentation

The accompanying condensed consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. Investments in the 50%-owned joint ventures operating the Ferrari and Maserati automobile dealership and the Brioni mens' retail clothing store inside Wynn Las Vegas are accounted for under the equity method. All significant intercompany accounts and transactions have been eliminated. Certain amounts in the condensed consolidated financial statements for the previous periods have been reclassified to be consistent with the current period presentation. These reclassifications had no effect on the previously reported net income.

The accompanying condensed consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations, although the Company believes that the disclosures herein are adequate to make the information presented not misleading. In the opinion of management, all adjustments (which include only normal recurring adjustments) necessary for a fair presentation of the results for the interim periods have been made. The results for the three and nine months ended September 30, 2012, are not necessarily indicative of results to be expected for the full fiscal year. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto in the Company's Annual Report on Form 10-K for the year ended December 31, 2011.

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2. Summary of Significant Accounting Policies

Cash and Cash Equivalents

Cash and cash equivalents are comprised of highly liquid investments with purchase maturities of three months or less. Cash equivalents are carried at cost, which approximates fair value. Cash equivalents of \$1.7 billion and \$545 million at September 30, 2012 and December 31, 2011, respectively, were invested in time deposits, money market accounts and commercial paper. In addition, the Company held bank deposits and cash on hand of approximately \$638 million and \$717.5 million as of September 30, 2012 and December 31, 2011, respectively.

Restricted Cash and Investment Securities

Restricted cash consists primarily of certain proceeds of the Company's financing activities that are restricted by the agreements governing the Company's debt instruments for the payment of certain Cotai related construction and development costs. Restricted cash balances totaled approximately \$151.8 million at September 30, 2012, substantially all of which were invested in time deposits. There was no restricted cash at December 31, 2011.

Investment securities consist of short-term and long-term investments in domestic and foreign corporate debt securities and commercial paper. The Company's investment policy limits the amount of exposure to any one issuer with the objective of minimizing the potential risk of principal loss. Management determines the appropriate classification (held-to-maturity/available-for-sale) of its securities at the time of purchase and reevaluates such designation as of each balance sheet date. The Company's current investments are reported at fair value, with unrealized gains and losses, net of tax, reported in other comprehensive income. Adjustments are made for amortization of premiums and accretion of discounts to maturity computed under the effective interest method. Such amortization is included in interest income together with realized gains and losses and the stated interest on such securities.

Accounts Receivable and Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of casino accounts receivable. The Company issues credit in the form of "markers" to approved casino customers following investigations of creditworthiness. At September 30, 2012 and December 31, 2011, approximately 79% and 84%, respectively, of the Company's markers were due from customers residing outside the United States, primarily in Asia. Business or economic conditions or other significant events in these countries could affect the collectibility of such receivables.

Accounts receivable, including casino and hotel receivables, are typically non-interest bearing and are initially recorded at cost. Accounts are written off when management deems them to be uncollectible. Recoveries of accounts previously written off are recorded when received. An allowance for doubtful accounts is maintained to reduce the Company's receivables to their estimated carrying amount, which approximates fair value. The allowance is estimated based on specific review of customer accounts as well as management's experience with collection trends in the casino industry and current economic and business conditions. In June 2012, the Company recorded an adjustment to its reserve estimates for casino accounts receivable based on the results of historical collection patterns and current collection trends. For the nine months ended September 30, 2012, this adjustment benefitted operating income by \$30.9 million and net income attributable to Wynn Resorts, Limited by \$23.3 million (or \$0.22 per share on a fully diluted basis).

Inventories

Inventories consist of retail, food and beverage items, which are stated at the lower of cost or market value, and certain operating supplies. Cost is determined by the first-in, first-out, average and specific identification methods.

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Revenue Recognition and Promotional Allowances

Casino revenues are measured by the aggregate net difference between gaming wins and losses, with liabilities recognized for funds deposited by customers before gaming play occurs and for chips in the customers' possession. Cash discounts, other cash incentives related to casino play and commissions rebated through junkets to customers are recorded as a reduction to casino revenue. Hotel, food and beverage, entertainment and other operating revenues are recognized when services are performed. Entertainment, retail and other revenue includes rental income which is recognized on a time proportion basis over the lease term. Contingent rental income is recognized when the right to receive such rental income is established according to the lease agreements. Advance deposits on rooms and advance ticket sales are recorded as customer deposits until services are provided to the customer.

Revenues are recognized net of certain sales incentives which are required to be recorded as a reduction of revenue; consequently, the Company's casino revenues are reduced by discounts and commissions, and points earned in the player's club loyalty program.

The retail value of accommodations, food and beverage, and other services furnished to guests without charge is included in gross revenues and then deducted as promotional allowances. The estimated cost of providing such promotional allowances is primarily included in casino expenses as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Rooms	\$ 13,647	\$ 13,080	\$ 39,845	\$ 39,169
Food and beverage	26,188	26,356	80,271	77,551
Entertainment, retail and other	4,803	4,188	13,498	12,509
	<u>\$ 44,638</u>	<u>\$ 43,624</u>	<u>\$ 133,614</u>	<u>\$ 129,229</u>

Gaming Taxes

The Company is subject to taxes based on gross gaming revenue in the jurisdictions in which it operates, subject to applicable jurisdictional adjustments. These gaming taxes are an assessment on the Company's gaming revenue and are recorded as an expense within the "Casino" line item in the accompanying Condensed Consolidated Statements of Income. These taxes totaled approximately \$448.6 million and \$472.9 million for the three months ended September 30, 2012 and 2011, respectively. These taxes totaled approximately \$1,356.2 million and \$1,383.7 million for the nine months ended September 30, 2012 and 2011, respectively.

Advertising Costs

The Company expenses advertising costs the first time the advertising takes place and such costs are primarily included in general and administrative expenses. Advertising costs were \$5.5 million for both the three months ended September 30, 2012 and 2011. These costs totaled approximately \$16.8 million and \$12.9 million for the nine months ended September 30, 2012 and 2011, respectively.

Fair Value Measurements

The Company measures certain of its financial assets and liabilities, such as cash equivalents, available-for-sale securities and interest rate swaps, at fair value on a recurring basis pursuant to accounting standards for fair value measurements. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. These accounting standards establish a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2,

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defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

The following table presents assets and liabilities carried at fair value (amounts in thousands):

		Fair Value Measurements Using:		
	Total Carrying Value	Quoted Market Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
As of September 30, 2012				
Cash equivalents	\$ 1,692,901	\$ 908,046	\$ 784,855	\$ —
Restricted cash and available-for-sale securities	\$ 392,103	\$ 151,776	\$ 240,327	\$ —
As of December 31, 2011				
Cash equivalents	\$ 545,045	\$ 363,104	\$ 181,941	\$ —
Interest rate swaps	\$ 7,298	\$ —	\$ 7,298	\$ —
Available-for-sale securities	\$ 213,567	\$ —	\$ 213,567	\$ —

Recently Issued Accounting Standards

In July 2012, the Financial Accounting Standards Board ("FASB") issued an accounting standards update that is intended to simplify the guidance for testing the decline in the realizable value (impairment) of indefinite-lived intangible assets other than goodwill. The update allows for the consideration of qualitative factors in determining whether it is necessary to perform quantitative impairment tests. The effective date for this update is for the years and interim impairment tests performed for years beginning after September 15, 2012. This update is not expected to have a material impact on the Company's financial statements.

3. Earnings Per Share

Basic earnings per share ("EPS") is computed by dividing net income attributable to Wynn Resorts by the weighted average number of shares outstanding during the period. Diluted EPS reflects the addition of potentially dilutive securities, which for the Company include stock options and nonvested stock. The weighted average common shares outstanding decreased for the three and nine months ended September 30, 2012, due to the redemption and cancellation of 24,549,222 common shares on February 18, 2012, from a former stockholder and related party as described in Notes 9 and 15.

The weighted average number of common and common equivalent shares used in the calculation of basic and diluted EPS consisted of the following (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Weighted average common shares outstanding (used in calculation of basic earnings per share)	99,871	124,176	104,104	123,969
Potential dilution from the assumed exercise of stock options and nonvested stock	1,021	1,684	1,187	1,706
Weighted average common and common equivalent shares outstanding (used in calculation of diluted earnings per share)	100,892	125,860	105,291	125,675
Anti-dilutive stock options excluded from the calculation of diluted earnings per share	724	25	724	610

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4. Comprehensive Income

The following table presents the changes by component in Accumulated Other Comprehensive Income of the Company (amounts in thousands):

	Foreign currency translation	Unrealized gain/loss on securities	Accumulated other comprehensive income
December 31, 2011	\$ 2,409	\$ (1,569)	\$ 840
Current period other comprehensive income	1,450	1,335	2,785
September 30, 2012	\$ 3,859	\$ (234)	\$ 3,625

5. Supplemental Disclosure of Cash Flow Information

In February 2012, the Company redeemed and cancelled 24,549,222 shares of common stock from a former stockholder and related party with the issuance of a \$1.94 billion promissory note due in 2022. For details of this transaction see Notes 9 and 15.

Interest paid for the nine months ended September 30, 2012 and 2011, totaled approximately \$179.9 million and \$177.2 million, respectively. Capitalized interest was \$1 million for the nine months ended September 30, 2012. No interest was capitalized during the nine months ended September 30, 2011.

For the nine months ended September 30, 2012 and 2011, capital expenditures included an increase of \$6.9 million and \$16.8 million, respectively, in construction payables and retention.

6. Investment Securities

Investment securities consisted of the following (amounts in thousands):

	Available-for-sale securities			Fair value (net carrying amount)
	Amortized cost	Gross unrealized gains	Gross unrealized losses	
September 30, 2012				
Domestic and foreign corporate bonds	\$ 205,997	\$ 140	\$ (496)	\$ 205,641
Commercial paper	34,688	8	(10)	34,686
	<u>\$ 240,685</u>	<u>\$ 148</u>	<u>\$ (506)</u>	<u>\$ 240,327</u>
December 31, 2011				
Domestic and foreign corporate bonds	\$ 196,986	\$ 20	\$ (2,070)	\$ 194,936
Commercial paper	18,651	1	(21)	18,631
	<u>\$ 215,637</u>	<u>\$ 21</u>	<u>\$ (2,091)</u>	<u>\$ 213,567</u>

For investments with unrealized losses as of September 30, 2012 and December 31, 2011, the Company has determined that (i) it does not have the intent to sell any of these investments, and (ii) it is not likely that the Company will be required to sell these investments prior to the recovery of the amortized cost. Accordingly, the Company has determined that no other-than-temporary impairments exist at the reporting date.

The Company obtains pricing information in determining the fair value of its available-for-sale securities from independent pricing vendors. Based on management's inquiries, the pricing vendors use various pricing models consistent with what other market participants would use. The assumptions and inputs used by the pricing

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vendors are derived from market observable sources including: reported trades, broker/dealer quotes, issuer spreads, benchmark curves, bids, offers and other market-related data. Each quarter, the Company validates the fair value pricing methodology to determine the fair value consistent with applicable accounting guidance and to confirm that the securities are classified properly in the fair value hierarchy. The Company compares the pricing received from its vendors to independent sources for the same or similar securities and no adjustment to such prices have resulted.

The amortized cost and estimated fair value of these investment securities at September 30, 2012, by contractual maturity, are as follows (amounts in thousands):

	Amortized cost	Fair value
Available-for-sale securities:		
Due in one year or less	\$ 199,066	\$ 198,897
Due after one year through two years	41,619	41,430
	<u>\$ 240,685</u>	<u>\$ 240,327</u>

7. Receivables, net

Receivables, net consisted of the following (amounts in thousands):

	September 30, 2012	December 31, 2011
Casino	\$ 245,774	\$ 264,034
Hotel	15,376	20,790
Retail leases and other	48,482	45,520
	309,632	330,344
Less: allowance for doubtful accounts	(96,310)	(91,854)
	<u>\$ 213,322</u>	<u>\$ 238,490</u>

8. Property and Equipment, net

Property and equipment, net consisted of the following (amounts in thousands):

	September 30, 2012	December 31, 2011
Land and improvements	\$ 732,136	\$ 730,335
Buildings and improvements	3,796,697	3,777,612
Airplanes	77,436	77,436
Furniture, fixtures and equipment	1,638,682	1,655,655
Leasehold interests in land	316,577	316,437
Construction in progress	101,589	28,477
	6,663,117	6,585,952
Less: accumulated depreciation	(1,965,425)	(1,720,620)
	<u>\$ 4,697,692</u>	<u>\$ 4,865,332</u>

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9. Long-Term Debt

Long-term debt consisted of the following (amounts in thousands):

	September 30, 2012	December 31, 2011
7 7/8% Wynn Las Vegas First Mortgage Notes, due November 1, 2017, net of original issue discount of \$7,691 at September 30, 2012 and \$8,578 at December 31, 2011	\$ 492,309	\$ 491,422
7 7/8% Wynn Las Vegas First Mortgage Notes, due May 1, 2020, net of original issue discount of \$1,673 at September 30, 2012 and \$1,789 at December 31, 2011	350,337	350,221
7 3/4% Wynn Las Vegas First Mortgage Notes, due August 15, 2020	1,320,000	1,320,000
5 3/8% Wynn Las Vegas First Mortgage Notes, due March 15, 2022	900,000	—
Wynn Las Vegas Revolving Credit Facility, due July 15, 2013; interest at LIBOR plus 3%	—	—
Wynn Las Vegas Revolving Credit Facility, due July 17, 2015; interest at LIBOR plus 3%	—	—
Wynn Las Vegas Term Loan Facility, due August 15, 2013; interest at LIBOR plus 1.875%	—	40,262
Wynn Las Vegas Term Loan Facility, due August 17, 2015; interest at LIBOR plus 3%	—	330,605
Wynn Macau Senior Term Loan Facilities (as amended July 2012), due July 31, 2017 and July 31, 2018; interest at LIBOR or HIBOR plus 1.75%-2.50%, net of original issue discount of \$3,904 at September 30, 2012	749,132	—
Wynn Macau Senior Term Loan Facilities (as amended June 2007), due June 27, 2014; interest at LIBOR or HIBOR plus 1.25%-1.75%	—	477,251
Wynn Macau Senior Revolving Credit Facilities, (as amended July 2012) due July 31, 2017; interest at LIBOR or HIBOR plus 1.75%-2.50%	—	—
Wynn Macau Senior Revolving Credit Facility, due June 27, 2012; interest at LIBOR or HIBOR plus 1.25%	—	150,400
Redemption Price Promissory Note with former stockholder and related party, due February 18, 2022; interest at 2%	1,936,443	—
\$42 million Note Payable, due April 1, 2017; interest at LIBOR plus 1.25%	34,650	35,350
\$32.5 million Note Payable, due August 10, 2012; interest at LIBOR plus 1.15%	—	22,208
	5,782,871	3,217,719
Current portion of long-term debt	(1,400)	(407,934)
	<u>\$ 5,781,471</u>	<u>\$ 2,809,785</u>

5 3/8% Wynn Las Vegas First Mortgage Notes

On March 12, 2012, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. (together the "Issuers") issued, in a private offering, \$900 million aggregate principal amount of 5 3/8% First Mortgage Notes due 2022 (the "2022 Notes") pursuant to an Indenture, dated as of March 12, 2012 (the "2022 Indenture"). A portion of the proceeds were used to repay all amounts outstanding under the Wynn Las Vegas term loan facilities. In October 2012, the Issuers commenced an offer to exchange all of the 2022 Notes for notes registered under the Securities Act of 1933, as amended. The exchange offer closed on November 6, 2012.

The 2022 Notes will mature on March 15, 2022 and bear interest at the rate of 5 3/8% per annum. The Issuers may redeem all or a portion of the 2022 Notes at any time on or after March 15, 2017, at a premium decreasing ratably to zero, plus accrued and unpaid interest. In addition, prior to March 15, 2015, the Issuers may redeem up to 35% of the aggregate principal amount of the 2022 Notes with the net proceeds of one or more qualified equity

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contributions made to the Issuers by their parent, Wynn Resorts, Limited. If the Issuers undergo a change of control, they must offer to repurchase the 2022 Notes at 101% of the principal amount, plus accrued and unpaid interest. If the Issuers sell certain assets or suffer an event of loss, and the Issuers do not use the sale or insurance proceeds for specified purposes, they must offer to repurchase the 2022 Notes at 100% of the principal amount, plus accrued and unpaid interest. The 2022 Notes are also subject to mandatory redemption requirements imposed by gaming laws and regulations of gaming authorities in Nevada.

As described in Note 15 of the Condensed Consolidated Financial Statements, Elaine Wynn has submitted a cross claim against Steve Wynn and Kazuo Okada. The indentures for the Wynn Las Vegas, LLC 2022 Notes and Existing Notes (the "Indentures") provide that if Steve Wynn, together with certain related parties, in the aggregate beneficially owns a lesser percentage of the outstanding common stock of the Company than are beneficially owned by any other person, a change of control will have occurred. If Elaine Wynn prevails in her cross claim, Steve Wynn would not beneficially own or control Elaine Wynn's shares and a change in control may result under the Company's debt documents.

The 2022 Indenture contains covenants limiting the Issuers' and the Issuers' restricted subsidiaries' ability to: pay dividends or distributions or repurchase equity; incur additional debt; make investments; create liens on assets to secure debt; enter into transactions with affiliates; issue stock of, or member's interests in, subsidiaries; enter into sale-leaseback transactions; engage in other businesses; merge or consolidate with another company; transfer and sell assets; issue disqualified stock; create dividend and other payment restrictions affecting subsidiaries; and designate restricted and unrestricted subsidiaries. These covenants are subject to a number of important and significant limitations, qualifications and exceptions.

The 2022 Notes rank pari passu in right of payment with the Issuers' outstanding 7⁷/₈% First Mortgage Notes due 2017 (the "2017 Notes"), the 7⁷/₈% First Mortgage Notes due 2020 ("7⁷/₈% 2020 Notes") and the 7³/₄% First Mortgage Notes due 2020 (the "7³/₄% 2020 Notes" and, together with the 2017 Notes and the 7⁷/₈% 2020 Notes, the "Existing Notes").

On September 17, 2012, the Wynn Las Vegas Credit Agreement was terminated as discussed below, and in accordance with the respective indentures, the liens on the assets of Wynn Las Vegas and its subsidiaries securing, and the subsidiary guarantees of, the 2022 Notes and the Existing Notes were released. The 2022 Notes and the Existing Notes are unsecured, except by a pledge of the equity interests of Wynn Las Vegas, granted by its parent, Wynn Resorts Holdings, LLC, and are not guaranteed by any of the Wynn Las Vegas subsidiaries.

Wynn Las Vegas Revolving Credit Facilities

On March 12, 2012, Wynn Las Vegas entered into an eighth amendment ("Amendment No. 8") to its Amended and Restated Credit Agreement, dated as of August 15, 2006 (as amended, the "Wynn Las Vegas Credit Agreement"). Amendment No. 8 amended the Wynn Las Vegas Credit Agreement to, among other things, permit the issuance of the 2022 Notes. Concurrently with the issuance of the 2022 Notes, Wynn Las Vegas, LLC prepaid all term loans under the Wynn Las Vegas Credit Agreement, terminated all of its revolving credit commitments that were due to expire in 2013, and terminated all but \$100 million of its revolving credit commitments expiring in 2015. In connection with this transaction, the Company expensed deferred financing fees of \$4.8 million, all related to the Wynn Las Vegas term loan and revolving credit facilities.

On September 17, 2012, Wynn Las Vegas terminated the Wynn Las Vegas Credit Agreement. No loans were outstanding under the Wynn Las Vegas Credit Agreement at the time of termination. Prior to such termination, certain letters of credit in which lenders had participated pursuant to the Wynn Las Vegas Credit Agreement were reallocated to a separate, unsecured letter of credit facility provided by Deutsche Bank, A.G. Wynn Las Vegas did not incur any early termination penalties related to the termination.

In connection with the termination, the Company expensed \$2 million of previously deferred financing costs and third party fees related to the Wynn Las Vegas Credit Agreement.

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Wynn Macau Credit Facilities

During the nine months ended September 30, 2012, the Company repaid \$150.4 million of borrowings under the Wynn Macau Senior Revolving Credit Facility. On June 27, 2012, the Wynn Macau Senior Revolving Credit Facility matured with an outstanding balance of \$0.

On July 31, 2012, Wynn Macau, S.A., amended and restated its credit facilities, dated September 14, 2004 (as so amended and restated, the "Amended Wynn Macau Credit Facilities"), and appointed Bank of China Limited, Macau Branch as intercreditor agent, facilities agent and security agent. The Amended Wynn Macau Credit Facilities and related agreements took effect on July 31, 2012 and expand availability under Wynn Macau S.A.'s senior secured bank facility to US\$2.3 billion equivalent, consisting of a US\$750 million equivalent fully funded senior secured term loan facility and a US\$1.55 billion equivalent senior secured revolving credit facility. Wynn Macau, S.A. also has the ability to upsize the total senior secured facilities by an additional US\$200 million pursuant to the terms and provisions of the Amended Wynn Macau Credit Facilities. Borrowings under the Amended Wynn Macau Credit Facilities, which consist of both Hong Kong Dollar and United States Dollar tranches, were used to refinance Wynn Macau S.A.'s existing indebtedness, and will be used to fund the design, development, construction and pre-opening expenses of Wynn Cotai and for general corporate purposes.

The term loan facility matures in July 2018, and the revolving credit facility matures in July 2017. The principal amount of the term loan is required to be repaid in two equal installments in July 2017 and July 2018. The senior secured facilities bear interest for the first six months after closing at LIBOR or HIBOR plus a margin of 2.50% and thereafter will be subject to LIBOR or HIBOR plus a margin of between 1.75% to 2.50% based on Wynn Macau, S.A.'s leverage ratio.

Borrowings under the Amended Wynn Macau Credit Facilities are guaranteed by Palo Real Estate Company Limited ("Palo"), a subsidiary of Wynn Macau, S.A., and by certain subsidiaries of the Company that own equity interests in Wynn Macau, S.A., and are secured by substantially all of the assets of Wynn Macau, S.A., the equity interests in Wynn Macau, S.A. and substantially all of the assets of Palo.

In connection with amending the Wynn Macau Credit Facilities, the Company expensed \$17.7 million and capitalized \$32.9 million of financing costs.

Redemption Price Promissory Note

Based on the Board of Directors' finding of "unsuitability," on February 18, 2012, the Company redeemed and cancelled Aruze USA, Inc.'s 24,549,222 shares of Wynn Resorts' common stock. Following a finding of "unsuitability," Wynn Resorts' articles of incorporation authorize redemption of the shares held by unsuitable persons at a "fair value" redemption price. The Company engaged an independent financial advisor to assist in the fair value calculation and concluded that a discount to the then current trading price was appropriate because of, among other things, restrictions on most of the shares which are subject to the terms of an existing stockholder agreement. Pursuant to the articles of incorporation, the Company issued the Redemption Price Promissory Note to Aruze USA, Inc., a former stockholder and related party, in redemption of the shares. The Redemption Price Promissory Note (the "Redemption Note") has a principal amount of \$1.94 billion, matures on February 18, 2022 and bears interest at the rate of 2% per annum payable annually in arrears on each anniversary of the date of the Redemption Note. The Company may, in its sole and absolute discretion, at any time and from time to time, and without penalty or premium, prepay the whole or any portion of the principal or interest due under the Redemption Note. In no instance shall any payment obligation under the Redemption Note be accelerated except in the sole and absolute discretion of the Company or as specifically mandated by law. The indebtedness evidenced by the Redemption Note is and shall be subordinated in right of payment, to the extent and in the manner provided in the Redemption Note, to the prior payment in full of all existing and future obligations of Wynn Resorts and any of its affiliates in respect of indebtedness for borrowed money of any kind or nature.

The Company has recorded the fair value of the Redemption Note at its estimated present value of approximately \$1.94 billion in accordance with applicable accounting guidance. In determining this fair value,

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the Company considered the stated maturity of the Redemption Note, its stated interest rate, and the uncertainty of the related cash flows of the Redemption Note as well as the potential effects of the following: uncertainties surrounding the potential outcome and timing of pending litigation with Aruze USA, Inc. (see Note 15); the outcome of on-going investigations by the Nevada Gaming Control Board; and other potential legal and regulatory actions. In addition, in the furtherance of various future business objectives, the Company considered its ability, at its sole option, to prepay the Redemption Note at any time in accordance with its terms without penalty. Accordingly, the Company reasonably determined that the estimated life of the Redemption Note could be less than the contractual life of the Redemption Note. When considering the appropriate rate of interest to be used to determine fair value for accounting purposes and in light of the uncertainty in the timing of the cash flows, the Company used observable inputs from a range of trading values of financial instruments with lives similar to the estimated life of the Redemption Note. As a result of this analysis, the Company concluded the Redemption Note's stated rate of 2% approximated a market rate.

Debt Covenant Compliance

As of September 30, 2012, management believes the Company was in compliance with all debt covenants.

Fair Value of Long-Term Debt

The net book value of the Company's outstanding first mortgage notes was approximately \$3.1 billion and \$2.2 billion at September 30, 2012 and December 31, 2011, respectively. The estimated fair value of the Company's outstanding first mortgage notes, based on recent trades (using level 2 inputs), was approximately \$3.3 billion and \$2.4 billion at September 30, 2012 and December 31, 2011, respectively. The net book value of the Company's other debt instruments, excluding the Redemption Note, was approximately \$783.8 million and \$1.1 billion at September 30, 2012 and December 31, 2011, respectively. The estimated fair value of the Company's other debt instruments was approximately \$750.1 million and \$1 billion at September 30, 2012 and December 31, 2011, respectively. The estimated fair value of the Redemption Note was approximately \$1.94 billion at September 30, 2012.

10. Interest Rate Swaps

The Company has entered into floating-for-fixed interest rate swap arrangements in order to manage interest rate risk relating to certain of its debt facilities. These interest rate swap agreements modify the Company's exposure to interest rate risk by converting a portion of the Company's floating-rate debt to a fixed rate. These interest rate swaps essentially fixed the interest rate at the percentages noted below; however, changes in the fair value of the interest rate swaps for each reporting period have been recorded as an increase/decrease in swap fair value in the accompanying Condensed Consolidated Statements of Income, as the interest rate swaps do not qualify for hedge accounting.

The Company measured the fair value of its interest rate swaps on a recurring basis pursuant to accounting standards for fair value measurements. The Company utilized Level 2 inputs as described in Note 2 to determine fair value. The fair value approximates the amount the Company would pay if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability and fluctuation between periods. The fair value is adjusted to reflect the impact of credit ratings of the counterparties or the Company, as applicable. These adjustments resulted in a reduction in the fair values as compared to their settlement values. As of December 31, 2011, the interest rate swap liabilities of \$7.3 million were included in other current accrued liabilities.

Wynn Las Vegas Swap

In June 2012, the Company terminated its Wynn Las Vegas swap for a payment of \$2.4 million. As of December 31, 2011, the liability fair value of this interest rate swap was approximately \$4.6 million.

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Wynn Macau Swaps

In June 2012, the Wynn Macau swap matured. As of December 31, 2011, the liability fair value of this interest rate swap was approximately \$2.7 million.

On September 28, 2012, the Company entered into two interest rate swap agreements intended to hedge a portion of the underlying interest rate risk on borrowings under the Amended Wynn Macau Credit Facilities. Under the two swap agreements, the Company pays a fixed interest rate of 0.73% (excluding the applicable interest margin) on notional amounts corresponding to borrowings of HK\$3.95 billion (approximately US\$509.3 million) incurred under the Amended Wynn Macau Credit Facilities in exchange for receipts on the same amount at a variable interest rate based on the applicable HIBOR at the time of payment. These interest rate swaps fix the all-in interest rate on such amounts at 2.48% to 3.23%. These interest rate swap agreements mature in July 2017.

11. Related Party Transactions

Related Party Share Redemption

Based on the Board of Directors' finding of "unsuitability," on February 18, 2012, the Company redeemed and cancelled Aruze USA, Inc.'s 24,549,222 shares of Wynn Resorts' common stock. Following a finding of "unsuitability," Wynn Resorts' articles of incorporation authorize redemption of the shares held by unsuitable persons at a "fair value" redemption price. The Company engaged an independent financial advisor to assist in the fair value calculation and concluded that a discount to the then current trading price was appropriate because of, among other things, restrictions on most of the shares which are subject to the terms of an existing stockholder agreement. Pursuant to the articles of incorporation, the Company issued the Redemption Note to Aruze USA, Inc., a former stockholder and related party, in redemption of the shares.

Amounts Due to Officers

The Company periodically provides services to Stephen A. Wynn, Chairman of the Board of Directors and Chief Executive Officer ("Mr. Wynn"), and certain other officers and directors of the Company, including household employees, construction work and other personal services. Mr. Wynn and the other officers and directors have deposits with the Company to prepay any such items, which are replenished on an ongoing basis as needed. As of September 30, 2012 and December 31, 2011, Mr. Wynn and the other officers and directors had a net deposit balance with the Company of approximately \$0.7 million and \$0.4 million, respectively.

Villa Suite Lease

On March 18, 2010, Mr. Wynn and Wynn Las Vegas entered into an Amended and Restated Agreement of Lease (the "SW Lease") for a villa suite to serve as Mr. Wynn's personal residence. The SW Lease amends and restates a prior lease. The SW Lease was approved by the Audit Committee of the Board of Directors of the Company. The term of the SW Lease commenced as of March 1, 2010 and runs concurrent with Mr. Wynn's employment agreement with the Company; provided that either party may terminate on 90 days notice. Pursuant to the SW Lease, the rental value of the villa suite is treated as imputed income to Mr. Wynn, and is equal to the fair market value of the accommodations provided. Effective March 1, 2010, and for the first two years of the term of the SW Lease, the rental value was \$503,831 per year. Effective March 1, 2012, the rental value is \$440,000 per year based on the current fair market value as established by the Audit Committee of the Company in reliance upon the opinion of an independent third-party appraisal. The rental value for the villa suite will be re-determined every two years during the term of the lease by the Audit Committee, with the assistance of an independent third-party appraisal. Certain services for, and maintenance of, the villa suite are included in the rental, as well as the use of minimal warehouse space at Wynn Las Vegas.

The "Wynn" Surname Rights Agreement

On August 6, 2004, the Company entered into agreements with Mr. Wynn that confirm and clarify the Company's rights to use the "Wynn" name and Mr. Wynn's persona in connection with its casino resorts. Under

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the parties' Surname Rights Agreement, Mr. Wynn granted the Company an exclusive, fully-paid-up, perpetual, worldwide license to use, and to own and register trademarks and service marks incorporating the "Wynn" name for casino resorts and related businesses, together with the right to sublicense the name and marks to its affiliates. Under the parties' Rights of Publicity License, Mr. Wynn granted the Company the exclusive, royalty-free, worldwide right to use his full name, persona and related rights of publicity for casino resorts and related businesses, together with the ability to sublicense the persona and publicity rights to its affiliates, until October 24, 2017.

12. Property Charges and Other

Property charges and other consisted of the following (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Donation to University of Macau	\$ 965	\$ 1,033	\$ 3,105	\$ 108,516
Loss on show cancellation	6,056	—	6,056	1,378
Net loss on assets abandoned, retired for remodel or sold	15,700	8,629	27,386	14,176
	<u>\$ 22,721</u>	<u>\$ 9,662</u>	<u>\$ 36,547</u>	<u>\$ 124,070</u>

Property charges generally include costs related to the retirement of assets for remodels and asset abandonments. Property charges and other for the three and nine months ended September 30, 2012, included a remodel of a Las Vegas restaurant, charges associated with the termination of a Las Vegas show which will end its run in November 2012 and miscellaneous renovations and abandonments at our resorts. Property charges and other for the three and nine months ended September 30, 2011 included the present value of a charitable contribution made by Wynn Macau to the University of Macau Development Foundation. This contribution consists of a \$25 million payment made in May 2011, and a commitment for additional donations of \$10 million each year for the calendar years 2012 through 2022 inclusive, for a total of \$135 million. The amount reflected in the accompanying Condensed Consolidated Statements of Income has been discounted using the Company's then estimated borrowing rate over the time period of the remaining committed payments. In accordance with accounting standards for contributions, subsequent accretion of the discount is being recorded as additional donation expense and included in Property charges and other. Property charges and other for the nine months ended September 30, 2011 also include the write off of certain costs related to a show that ended its run in Las Vegas and miscellaneous renovations and abandonments at our resorts.

13. Noncontrolling Interest

In October 2009, Wynn Macau, Limited, an indirect wholly owned subsidiary of the Company and the developer, owner and operator of Wynn Macau, listed its ordinary shares of common stock on The Stock Exchange of Hong Kong Limited. Through an initial public offering, including the over allotment, Wynn Macau, Limited sold 1,437,500,000 shares (27.7%) of its common stock. The shares of Wynn Macau, Limited were not and will not be registered under the Securities Act and may not be offered or sold in the United States absent a registration under the Securities Act as amended, or an applicable exception from such registration requirements. Net income attributable to noncontrolling interest was \$53.1 million and \$58.1 million for the three months ended September 30, 2012 and 2011, respectively. Net income attributable to noncontrolling interest was \$172.2 million and \$144 million for the nine months ended September 30, 2012 and 2011, respectively.

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14. Stock-Based Compensation

The total compensation cost relating both to stock options and nonvested stock is allocated as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Casino	\$ 2,621	\$ 2,076	\$ 3,571	\$ 6,804
Rooms	34	90	234	329
Food and beverage	27	99	82	371
Entertainment, retail and other	—	3	14	19
General and administrative	3,168	3,374	9,803	10,795
Total stock-based compensation expense	5,850	5,642	13,704	18,318
Total stock-based compensation capitalized	49	437	146	827
	<u>\$ 5,899</u>	<u>\$ 6,079</u>	<u>\$ 13,850</u>	<u>\$ 19,145</u>

For the nine months ended September 30, 2012, the Company reversed stock-based compensation expense allocated to casino operations related to stock options and restricted stock granted in 2008 with an approximate 8 year cliff vest provision that were forfeited during the first quarter of 2012.

15. Commitments and Contingencies

Wynn Macau

Cotai Development and Land Concession Contract. In September 2011, Pajo Real Estate Company Limited and Wynn Resorts (Macau) S.A., each an indirect subsidiary of Wynn Macau, Limited, formally accepted the terms and conditions of a draft land concession contract from the Macau government for approximately 51 acres of land in the Cotai area of Macau. On May 2, 2012, the land concession contract was gazetted by the government of Macau evidencing the final step in the granting of the land concession. The Company is constructing a full scale integrated resort containing a casino, luxury hotel, convention, retail, entertainment and food and beverage offerings on this land. The Company estimates the project budget to be in the range of \$3.5 billion to \$4.0 billion. The Company expects to establish a guaranteed maximum price for the project in the first half of 2013.

The initial term of the land concession contract is 25 years from May 2, 2012, and it may be renewed with government approval for successive periods. The total land premium payable, including interest as required by the land concession contract, is \$193.4 million. An initial payment of \$62.5 million was paid in December 2011, with eight additional semi-annual payments of approximately \$16.4 million each (including interest at 5%) due beginning November 2012. As of September 30, 2012, the Company has recorded this obligation and related asset with \$27.2 million included as a current liability and \$90.3 million included as a long-term liability. The Company will also be required to make annual lease payments of \$0.8 million during the resort construction period and annual payments of approximately \$1.1 million once the development is completed.

Cotai Land Agreement. On May 10, 2012, the Company made a \$50 million payment to an unrelated third party in consideration of that party's relinquishment of certain rights in and to any future development on the Cotai land noted above.

Litigation

In addition to the actions noted below, the Company's affiliates are involved in litigation arising in the normal course of business. In the opinion of management, such litigation will not have a material effect on the Company's financial condition, results of operations or cash flows.

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Atlantic-Pacific Capital

On May 3, 2010, Atlantic-Pacific Capital, Inc. ("APC") filed an arbitration demand with Judicial Arbitration and Mediation Services regarding an agreement with the Company. The action concerns a claim for compensation of approximately \$32 million pursuant to an agreement entered into between APC and the Company on or about March 30, 2008 whereby APC was engaged to raise equity capital for an investment vehicle sponsored by the Company. APC is seeking compensation unrelated to the investment vehicle. The Company has denied APC's claims for compensation. The Company filed a Complaint for Damages and Declaratory Relief against APC in the Eighth Judicial District Court, Clark County, Nevada, on May 10, 2010. APC removed the action to the United States District Court, District of Nevada. In March 2011, the District Court denied APC's motion to compel arbitration, and dismissed the action. APC appealed the matter to the United States Court of Appeals for the Ninth Circuit. On October 15, 2012, the matter was argued and submitted. Management believes that APC's claims against the Company are without merit, and the Company intends to continue to defend this matter vigorously.

Determination of Unsuitability and Redemption of Aruze USA, Inc. and Affiliates and Related Matters

On February 18, 2012, Wynn Resorts' Gaming Compliance Committee concluded an investigation after receiving an independent report by Freeh, Sporkin & Sullivan, LLP (the "Freeh Report") detailing a pattern of misconduct by Aruze USA, Inc., at the time a stockholder of Wynn Resorts, Universal Entertainment Corporation, Aruze USA, Inc.'s parent company, and Kazuo Okada, the majority shareholder of Universal Entertainment Corporation, who is also a member of Wynn Resorts' Board of Directors and was at the time a director of Wynn Macau, Limited. The factual record presented in the Freeh Report included evidence that Aruze USA, Inc., Universal Entertainment Corporation and Mr. Okada had provided valuable items to certain foreign gaming officials who were responsible for regulating gaming in a jurisdiction in which entities controlled by Mr. Okada were developing a gaming resort. Mr. Okada has denied the impropriety of such conduct to members of the Board of Directors of Wynn Resorts and Mr. Okada has refused to acknowledge or abide by Wynn Resorts' anti-bribery policies and has refused to participate in the training all other directors have received concerning these policies.

Based on the Freeh Report, the Board of Directors of Wynn Resorts determined that Aruze USA, Inc., Universal Entertainment Corporation and Mr. Okada are "unsuitable persons" under Article VII of the Company's articles of incorporation. The Board of Directors was unanimous (other than Mr. Okada) in its determination. The Board of Directors also requested that Mr. Okada resign as a director of Wynn Resorts (under Nevada corporation law, a board of directors does not have the power to remove a director) and recommended that Mr. Okada be removed as a member of the board of directors of Wynn Macau, Limited. In addition, on February 18, 2012, Mr. Okada was removed from the board of directors of Wynn Las Vegas Capital Corp., an indirect wholly owned subsidiary of Wynn Resorts.

Based on the Board of Directors' finding of "unsuitability," on February 18, 2012, Wynn Resorts redeemed and cancelled Aruze USA, Inc.'s 24,549,222 shares of Wynn Resorts' common stock. Following a finding of "unsuitability," Article VII of Wynn Resorts' articles of incorporation authorize redemption at "fair value" of the shares held by unsuitable persons. The Company engaged an independent financial advisor to assist in the fair value calculation and concluded that a discount to the then current trading price was appropriate because of, among other things, restrictions on most of the shares held by Aruze USA, Inc. under the terms of the Stockholders Agreement (as defined below). Pursuant to the articles of incorporation, Wynn Resorts issued the Redemption Note to Aruze USA, Inc. in redemption of the shares. The Redemption Note has a principal amount of \$1.94 billion, matures on February 18, 2022 and bears interest at the rate of 2% per annum, payable annually in arrears on each anniversary of the date of the Redemption Note. The Company may, in its sole and absolute discretion, at any time and from time to time, and without penalty or premium, prepay the whole or any portion of the principal or interest due under the Redemption Note. In no instance shall any payment obligation under the Redemption Note be accelerated except in the sole and absolute discretion of Wynn Resorts or as specifically mandated by law. The indebtedness evidenced by the Redemption Note is and shall be subordinated in right of

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payment, to the extent and in the manner provided in the Redemption Note, to the prior payment in full of all existing and future obligations of Wynn Resorts or any of its affiliates in respect of indebtedness for borrowed money of any kind or nature. After authorizing the redemption of the Aruze USA, Inc. shares, the Board of Directors took certain actions to protect the Company and its operations from any influence of an unsuitable person, including placing limitations on the provision of certain operating information to unsuitable persons, evaluating whether to seek the removal of Mr. Okada from the Company's Board of Directors, and formation of an Executive Committee of the Board to manage the business and affairs of the Company during the period between each annual meeting. The Charter of the Executive Committee provides that "Unsuitable Persons" are not permitted to serve on the Committee. All members of the Board, other than Mr. Okada, were appointed to the Executive Committee on February 18, 2012.

On February 19, 2012, Wynn Resorts filed a complaint in the Eighth Judicial District Court, Clark County, Nevada against Mr. Okada, Aruze USA, Inc. and Universal Entertainment Corporation, companies controlled by Mr. Okada (the "Okada Parties"), alleging breaches of fiduciary duty and related claims. The Company is seeking compensatory and special damages as well as a declaration that it acted lawfully and in full compliance with its articles of incorporation, bylaws and other governing documents. On March 12, 2012, Aruze USA, Inc. and Universal Entertainment Corporation removed the action to the United States District Court for the District of Nevada. On that same date, Aruze USA, Inc. and Universal Entertainment Corporation filed an answer denying the claims and a counterclaim that purports to assert claims against the Company, each of the members of the Company's Board of Directors (other than Mr. Okada) and Wynn Resorts' General Counsel. Among other relief, the counterclaim seeks a declaration that the redemption of Aruze USA, Inc.'s shares was void, an injunction restoring Aruze USA, Inc.'s share ownership, damages in an unspecified amount and rescission of the Stockholders Agreement. On March 29, 2012, the Company filed a motion to remand the action to state court and requested an extension to answer the denial of Wynn Resorts' claims and the Okada Parties' counterclaims. The federal district court granted the Company's motion to remand and awarded the Company its related attorneys' fees. This case is now pending in the state court, which has determined that this action will be coordinated with Mr. Okada's inspection action (discussed below). The Okada Parties filed a notice of intent to commence a separate federal securities action for the securities counterclaims previously asserted, but have not done so as of the date of this report.

On June 19, 2012, Elaine Wynn responded to the Okada Parties' Counterclaim and asserted a cross claim against Steve Wynn and Kazuo Okada seeking a declaration that (1) any and all of Elaine Wynn's duties under the January 2010 Stockholders Agreement (the "Stockholders Agreement") by and among Aruze USA, Inc., Steve Wynn, and Elaine Wynn be discharged; (2) the Stockholders Agreement is subject to rescission and is rescinded; (3) the Stockholders Agreement is an unreasonable restraint on alienation in violation of public policy; and/or (4) the restrictions on sale of shares shall be construed as inapplicable to Elaine Wynn. Mr. Wynn filed his answer to Elaine Wynn's cross claim on September 24, 2012. The indentures for the Wynn Las Vegas, LLC 2022 Notes and Existing Notes (the "Indentures") provide that if Steve Wynn, together with certain related parties, in the aggregate beneficially owns a lesser percentage of the outstanding common stock of the Company than are beneficially owned by any other person, a change of control will have occurred. If Elaine Wynn prevails in her cross claim, Steve Wynn would not beneficially own or control Elaine Wynn's shares and a change in control may result under the Company's debt documents. Under the Indentures, the occurrence of a change of control requires that the Company make an offer (unless the notes have been previously called for redemption) to each holder to repurchase all or any part of such holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest on the Notes purchased, if any, to the date of repurchase.

On February 24, 2012, the board of directors of Wynn Macau, Limited removed Mr. Kazuo Okada from the board.

The Company provided the Free Report to appropriate regulators and law enforcement agencies and is cooperating with related investigations that such regulators and agencies have undertaken. The conduct of the

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Okada Parties and any resulting regulatory investigations could have adverse consequences to the Company and its subsidiaries. A finding by regulatory authorities that Mr. Okada violated anti-corruption statutes and/or other laws or regulations applicable to persons affiliated with a gaming licensee on Company property and/or otherwise involved the Company in criminal or civil violations could result in actions by regulatory authorities against the Company. Relatedly, as described below, the Salt Lake Regional Office of the U.S. Securities and Exchange Commission ("SEC") has commenced an informal inquiry into, and other regulators could pursue separate investigations into, the Company's compliance with applicable laws arising from the allegations in the matters described above and in response to litigation filed by Mr. Okada suggesting improprieties in connection with the Company's donation to the University of Macau. While the Company believes that it is in full compliance with all applicable laws, any such investigations could result in actions by regulators against the Company.

The Executive Committee continues to monitor such investigations and may decide at some future point to call a special meeting of stockholders for the purpose of removing Mr. Okada, if it considers such action to be desirable and in the best interests of the Company and its stockholders.

On August 28, 2012, Mr. Okada, Universal Entertainment Corporation and Okada Holdings filed a complaint in Tokyo District Court against the Company, all members of the Board (other than Mr. Okada) and the Company's General Counsel, alleging that the press release issued by the Company with respect to the redemption has damaged plaintiffs' social evaluation and credibility. The plaintiffs seek damages and legal fees from the defendants.

On August 31, 2012, the Company received a letter from Aruze USA, Inc. purportedly notifying the Company of its intent to nominate two individuals for election as directors pursuant to Section 2.13 of the Company's Fourth Amended and Restated Bylaws. Section 2.13 provides for nominations by stockholders. As a result of the Board's determination on February 18, 2012, that all of Mr. Okada, Aruze USA, Inc. and Universal are "unsuitable persons" as defined in the Articles of Incorporation of the Company, and the subsequent redemption of all shares previously owned by Aruze USA, Inc., the Company believes that Aruze USA, Inc. is not eligible to make such nominations. On October 19, 2012, Aruze USA, Inc. publicly announced that it is terminating its efforts to elect such nominees.

On August 31, 2012, Aruze USA, Inc. filed a motion for preliminary injunction with the state court in Nevada. The motion sought a preliminary injunction that would prohibit Wynn Resorts from barring or preventing Aruze USA, Inc. from exercising rights as a stockholder and an order that its purported nominees be presented to Wynn Resorts' stockholders and voted on (including by Aruze USA, Inc. as a stockholder) at the 2012 Annual Meeting of Stockholders (scheduled for November 2, 2012). At the conclusion of a hearing held on October 2, 2012, the Nevada state court denied Aruze USA, Inc.'s motion for preliminary injunction. On October 19, 2012, Aruze USA, Inc. filed a notice of appeal with the Nevada Supreme Court. The Company intends to vigorously defend against the appeal and to argue that the Nevada Supreme Court should affirm the state court's decision.

On September 7, 2012, Aruze USA, Inc. and Universal Entertainment Corporation filed a second amended counterclaim in the Nevada state court. Wynn Resorts and the other counter-defendants filed a motion to dismiss that pleading on September 26, 2012. A hearing on the motion is scheduled for November 13, 2012.

In addition, on October 10, 2012, Mr. Okada filed a motion to dismiss the complaint that Wynn Resorts filed in the Nevada state court in February 2012. The Company filed an amended complaint on October 29, 2012.

Litigation Commenced by Kazuo Okada and Related Matters

On January 11, 2012, Mr. Okada, in his role as a Wynn Resorts' director, commenced a writ proceeding in the Eighth Judicial District Court, Clark County, Nevada, seeking to compel the Company to produce certain books and records relating to a donation to the University of Macau, among other things.

In May 2011, Wynn Macau, a majority owned subsidiary of the Company, made a commitment to the University of Macau Development Foundation in support of the new Asia-Pacific Academy of Economics and

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Management. This contribution consists of a \$25 million payment made in May 2011 and a commitment for additional donations of \$10 million each year for the calendar years 2012 through 2022 inclusive. The pledge was consistent with the Company's long-standing practice of providing philanthropic support for deserving institutions in the markets in which it operates. The pledge was made following an extensive analysis which concluded that the gift was made in accordance with all applicable laws. The pledge was considered by the boards of directors of both the Company and Wynn Macau, Limited and approved by 15 of the 16 directors who serve on those boards. The sole dissenting vote was cast by Mr. Okada whose stated objection was to the length of time over which the donation would occur, not its propriety.

On February 8, 2012, following Mr. Okada's lawsuit, the Company received a letter from the Salt Lake Regional Office of the SEC requesting that, in connection with an informal inquiry by the SEC, the Company preserve information relating to the donation to the University of Macau, any donations by the Company to any other educational charitable institutions, including the University of Macau Development Foundation, and the Company's casino or concession gaming licenses or renewals in Macau. The Company is cooperating with the Salt Lake Regional Office staff.

At a hearing on February 9, 2012, the Nevada state court held that, as a director of the Company, Mr. Okada had the right to make a reasonable inspection of the Company's corporate books and records. Following the hearing, the Company released certain documents to Mr. Okada for his inspection. At a subsequent hearing on March 8, 2012, the court considered Mr. Okada's request that the Company's Board of Directors make additional documents available to him, and ruled that Mr. Okada was entitled to inspect two additional pages of documents. The Company promptly complied with the court's ruling.

On May 25, 2012, Mr. Okada amended his petition to request inspection of additional records. The Nevada state court ordered Mr. Okada to file a supplemental brief addressing how his requests relate to his duties as a director of the Company, and the Company was to respond by filing a supplemental brief on the reasonableness of Mr. Okada's requests. After Mr. Okada filed his supplemental brief, the Company moved to depose Mr. Okada prior to having to file its supplemental brief. At a hearing on June 28, 2012, the state court ordered Mr. Okada to appear for a deposition in Las Vegas, Nevada, which took place on September 18, 2012. Following Mr. Okada's deposition, the parties each submitted supplemental briefs. Following a hearing held on October 2, 2012, the court ruled that Mr. Okada is entitled to review certain additional Company documents from the 2000 to 2002 time period. The Company has complied with the court's ruling. On November 2, 2012, Mr. Okada filed a motion to compel the production of additional documents and to depose a Company representative. A hearing on this motion is scheduled for November 8, 2012.

Related litigation

Six derivative actions were commenced against the Company and all members of its Board of Directors: four in the United States District Court, District of Nevada, and two in the Eighth Judicial District Court of Clark County, Nevada.

The four federal actions brought by the following plaintiffs have been consolidated: (1) The Louisiana Municipal Police Employees' Retirement System, (2) Maryanne Solak, (3) Excavators Union Local 731 Welfare Fund, and (4) Boilermakers Lodge No. 154 Retirement Fund (collectively, the Federal Plaintiffs").

The Federal Plaintiffs filed a consolidated complaint on August 6, 2012, asserting claims for: (1) breach of fiduciary duty; (2) waste of corporate assets; (3) injunctive relief; and (4) unjust enrichment. The claims are against the Company all Company directors, including Mr. Okada, however, the plaintiffs voluntarily dismissed Mr. Okada as a defendant in this consolidated action on September 27, 2012. The Federal Plaintiffs claim that the individual defendants breached their fiduciary duties and wasted assets by: (a) failing to ensure the Company's officers and directors complied with federal and state laws and the Company's Code of Conduct; (b) voting to allow the Company's subsidiary to make the donation to the University of Macau; and (c) redeeming Aruze USA, Inc.'s stock such that the Company incurs the debt associated with the redemption. The Federal Plaintiffs seek unspecified compensatory damages, restitution in the form of disgorgement, reformation of corporate

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governance procedures, an injunction against all future payments related to the donation/pledge, and all fees (attorneys, accountants, and experts) and costs. The directors responded to the consolidated complaint by filing a motion to dismiss on September 14, 2012. On October 15, 2012, the Federal Plaintiffs filed an opposition to the motion to dismiss, and the directors filed reply papers on November 5, 2012.

The two state court actions brought by the following plaintiffs have also been consolidated: (1) IBEW Local 98 Pension Fund and (2) Danny Hinson (collectively, the "State Plaintiffs"). Through a coordination of efforts by all parties, the directors and the Company (a nominal defendant) have been served in all of the actions.

The State Plaintiffs filed a consolidated complaint on July 20, 2012 asserting claims for (1) breach of fiduciary duty; (2) abuse of control; (3) gross mismanagement; and (4) unjust enrichment. The claims are against the Company and all Company directors, including Mr. Okada, as well as the Company's Chief Financial Officer, who signs financial disclosures filed with the SEC. The State Plaintiffs claim that the individual defendants failed to disclose to the Company's stockholders the investigation into, and the dispute with director Okada as well as the alleged potential violations of the FCPA related to, the University of Macau Development Foundation donation. The State Plaintiffs seek unspecified monetary damages (compensatory and punitive), disgorgement, reformation of corporate governance procedures, an order directing the Company to internally investigate the donation, as well as attorneys' fees and costs. The parties have entered into a stipulation providing for a stay of the state derivative action for 90 days, subject to the parties' obligation to monitor the progress of the pending litigation, discussed above, between Wynn Resorts (among others) and Mr. Okada (among others). Per the stipulation, Wynn Resorts and the individual defendants will not be required to respond to the consolidated complaint while the stay remains in effect. The state court entered the stipulation on October 25, 2012.

The consolidated actions are in a preliminary stage and management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of this matter or the range of reasonably possible loss, if any.

16. Income Taxes

For the three months ended September 30, 2012 and 2011, the Company recorded a tax benefit of \$7.6 million and tax expense of \$4.3 million, respectively. For the nine months ended September 30, 2012 and 2011, the Company recorded a tax benefit of \$12.5 million and tax expense of \$11.6 million, respectively. The Company's income tax benefit is primarily related to a decrease in deferred tax liabilities reduced by foreign taxes assessable on the dividends of Wynn Macau, S.A. and foreign tax provisions related to international marketing offices. Since June 30, 2010, the Company no longer considers its portion of the tax earnings and profits of Wynn Macau, Limited to be permanently invested. No additional U.S. tax provision has been made with respect to amounts not considered permanently invested as the Company anticipates that U.S. foreign tax credits should be sufficient to eliminate any U.S. tax provision relating to such repatriation. The Company has not provided deferred U.S. income taxes or foreign withholding taxes on temporary differences as these amounts are permanently reinvested. For the nine months ended September 30, 2012 and 2011, the Company recognized income tax benefits related to excess tax deductions associated with stock compensation costs of \$1.8 million and \$10.5 million, respectively.

Wynn Macau, S.A. has received a 5-year exemption from Macau's 12% Complementary Tax on casino gaming profits through December 31, 2015. Accordingly, the Company was exempted from the payment of \$20.3 million and \$22.8 million in such taxes during the three months ended September 30, 2012 and 2011, respectively. For the nine months ended September 30, 2012 and 2011, the Company was exempted from the payment of such taxes totaling \$66.9 million and \$57.3 million, respectively. The Company's non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau Special Gaming tax and other levies together totaling 39% in accordance with its concession agreement.

In April 2012, the Company reached an agreement with the Appellate division of the Internal Revenue Service ("IRS") regarding issues raised during the examination of the 2006 through 2009 U.S. income tax

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returns. The issues for consideration by the Appellate division were temporary differences related to the treatment of discounts extended to certain Las Vegas casino customers wagering on credit, the deduction of certain costs incurred during the development and construction of Encore at Wynn Las Vegas and the appropriate tax depreciation recovery periods applicable to certain assets. The settlement with the Appellate division does not impact the Company's unrecognized tax benefits. The settlement of the 2006 through 2009 examination issues resulted in a cash tax payment of \$1.3 million and the utilization of \$3.1 million and \$0.9 million in foreign tax credit and general business credit carryforwards, respectively.

In July 2012, the Macau Finance Bureau commenced an examination of the 2008 Macau income tax return of Wynn Macau, S.A. Since the examination is in its initial stages, the Company is unable to determine if it will conclude within the next 12 months. The Company believes that its liability for uncertain tax positions is adequate with respect to the 2008 examination year.

17. Segment Information

The Company monitors its operations and evaluates earnings by reviewing the assets and operations of its Las Vegas Operations and its Macau Operations. The Company's total assets by segment are as follows (amounts in thousands):

	September 30, 2012	December 31, 2011
Assets		
Las Vegas Operations	\$ 3,637,308	\$ 4,035,398
Macau Operations	2,899,741	2,202,683
Corporate and other	1,419,178	661,415
	<u>\$ 7,956,227</u>	<u>\$ 6,899,496</u>

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The Company's segment information for its results of operations are as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Net revenues				
Las Vegas Operations	\$ 388,044	\$ 346,936	\$ 1,096,405	\$ 1,132,374
Macau Operations	910,451	951,368	2,768,795	2,793,555
Total	\$ 1,298,495	\$ 1,298,304	\$ 3,865,200	\$ 3,925,929
Adjusted Property EBITDA ⁽¹⁾				
Las Vegas Operations	\$ 110,390	\$ 85,134	\$ 293,193	\$ 349,954
Macau Operations	292,161	295,960	884,144	883,139
Total	402,551	381,094	1,177,337	1,233,093
Other operating costs and expenses				
Depreciation and amortization	94,274	100,522	280,142	303,921
Property charges and other	22,721	9,662	36,547	124,070
Corporate expenses and other	38,274	30,689	88,423	70,426
Equity in income from unconsolidated affiliates	190	376	911	1,242
Total	155,459	141,249	406,023	499,659
Operating income	247,092	239,845	771,314	733,434
Non-operating costs and expenses				
Interest income	3,759	2,663	7,807	4,639
Interest expense, net of capitalized interest	(75,082)	(57,462)	(211,017)	(173,956)
Increase in swap fair value	—	4,118	4,930	11,483
Loss on extinguishment of debt	(19,663)	—	(24,491)	—
Equity in income from unconsolidated affiliates	190	376	911	1,242
Other	1,249	(85)	936	1,616
Total	(89,547)	(50,390)	(220,924)	(154,976)
Income before income taxes	157,545	189,455	550,390	578,458
Benefit (provision) for income taxes	7,626	(4,270)	12,483	(11,607)
Net income	\$ 165,171	\$ 185,185	\$ 562,873	\$ 566,851

- (1) "Adjusted Property EBITDA" is earnings before interest, taxes, depreciation, amortization, pre-opening costs, property charges and other, corporate expenses, intercompany golf course and water rights leases, stock-based compensation, and other non-operating income and expenses and includes equity in income from unconsolidated affiliates. Adjusted Property EBITDA is presented exclusively as a supplemental disclosure because management believes that it is widely used to measure the performance, and as a basis for valuation, of gaming companies. Management uses Adjusted Property EBITDA as a measure of the operating performance of its segments and to compare the operating performance of its properties with those of its competitors. The Company also presents Adjusted Property EBITDA because it is used by some investors as a way to measure a company's ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplement to financial measures in accordance with U.S. generally accepted accounting principles ("GAAP"). In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including Wynn Resorts, Limited, have historically excluded from their EBITDA calculations pre-opening expenses, property charges, corporate expenses and stock-based compensation, which do not relate to the management of specific casino properties. However, Adjusted Property EBITDA should not be considered as an alternative to operating income as an indicator of the Company's performance, as an alternative to cash flows from operating activities as a measure of liquidity, or as an alternative to any other measure.

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determined in accordance with GAAP. Unlike net income, Adjusted Property EBITDA does not include depreciation or interest expense and therefore does not reflect current or future capital expenditures or the cost of capital. The Company has significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments, taxes and other non-recurring charges, which are not reflected in Adjusted Property EBITDA. Also, Wynn Resorts' calculation of Adjusted Property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

18. Subsequent Events

On October 24, 2012 the Company announced a cash dividend of \$8.00 per share, payable on November 20, 2012 to stockholders of record as of November 7, 2012.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with, and is qualified in its entirety by, the condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q. Unless the context otherwise requires, all references herein to the "Company," "we," "us" or "our," or similar terms, refer to Wynn Resorts, Limited, a Nevada corporation, and its consolidated subsidiaries.

Forward-Looking Statements

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements. Certain information included in this Quarterly Report on Form 10-Q contains statements that are forward-looking, including, but not limited to, statements relating to our business strategy and development activities as well as other capital spending, financing sources, the effects of regulation (including gaming and tax regulations), expectations concerning future operations, margins, profitability and competition. Any statements contained in this report that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the generality of the foregoing, in some cases you can identify forward-looking statements by terminology such as "may," "will," "should," "would," "could," "believe," "expect," "anticipate," "estimate," "intend," "plan," "continue" or the negative of these terms or other comparable terminology. Such forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by us. These risks and uncertainties include, but are not limited to:

- adverse tourism trends reflecting current domestic and international economic conditions;
- volatility and weakness in world-wide credit and financial markets and from governmental intervention in the financial markets;
- general global macroeconomic conditions;
- decreases in levels of travel, leisure and consumer spending;
- results of probity investigations;
- regulatory or enforcement actions;
- pending or future legal proceedings;
- fluctuations in occupancy rates and average daily room rates;
- continued high unemployment;
- conditions precedent to funding under our credit facilities;
- continued compliance with all provisions in our credit agreements;
- competition in the casino/hotel and resort industries and actions taken by our competitors;
- doing business in foreign locations such as Macau (including the risks associated with developing gaming regulatory frameworks);
- restrictions or conditions on visitation by citizens of mainland China to Macau;
- new development and construction activities of competitors;
- our dependence on Stephen A. Wynn and existing management;
- our dependence on a limited number of resorts and locations for all of our cash flow;
- leverage and debt service (including sensitivity to fluctuations in interest rates);
- changes in federal or state tax laws or the administration of such laws;
- changes in gaming laws or regulations (including the legalization of gaming in certain jurisdictions);

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- approvals under applicable jurisdictional laws and regulations (including gaming laws and regulations);
- cyber security risk including misappropriation of customer information or other breaches of information security;
- the impact that an outbreak of an infectious disease or the impact of a natural disaster may have on the travel and leisure industry; and
- the consequences of military conflicts in the Middle East and any future security alerts and/or terrorist attacks.

Further information on potential factors that could affect our financial condition, results of operations and business are included in this report and our other filings with the SEC. You should not place undue reliance on any forward-looking statements, which are based only on information currently available to us. We undertake no obligation to publicly release any revisions to such forward-looking statements to reflect events or circumstances after the date of this report.

Overview

We are a developer, owner and operator of destination casino resorts. We currently own and operate two casino resort complexes. In Las Vegas, Nevada, we own and operate Wynn Las Vegas, a destination casino resort which opened on April 28, 2005. In December 2008, we expanded Wynn Las Vegas with the opening of Encore at Wynn Las Vegas. We refer to the fully integrated Wynn Las Vegas and Encore at Wynn Las Vegas resort as our "Las Vegas Operations." In the Macau Special Administrative Region of the People's Republic of China ("Macau"), we own and operate Wynn Macau, which opened on September 6, 2006. On April 21, 2010, we opened Encore at Wynn Macau, a further expansion of Wynn Macau. We refer to the fully integrated Wynn Macau and Encore at Wynn Macau resort as our "Macau Operations."

Our Resorts

The following table sets forth information about our resorts as of October 2012:

	Hotel Rooms & Suites	Approximate Casino Square Footage	Approximate Number of Table Games	Approximate Number of Slots
Las Vegas Operations	4,750	186,000	220	2,325
Macau Operations	1,008	265,000	480	950

Las Vegas Operations

Wynn Las Vegas / Encore is located at the intersection of the Las Vegas Strip and Sands Avenue, and occupies approximately 215 acres of land fronting the Las Vegas Strip. In addition, we own approximately 18 acres across Sands Avenue, a portion of which is utilized for employee parking, and approximately 5 acres adjacent to the golf course on which an office building is located.

Our Las Vegas resort complex features:

- Approximately 186,000 square feet of casino space, offering 24-hour gaming and a full range of games, including private gaming salons, a sky casino, a poker room, and a race and sports book;
- Two luxury hotel towers with a total of 4,750 spacious hotel rooms, suites and villas;
- 32 food and beverage outlets featuring signature chefs;
- A Ferrari and Maserati automobile dealership;

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- Approximately 94,000 square feet of high-end, brand-name retail shopping, including stores and boutiques by Alexander McQueen, Brioni, Cartier, Chanel, Dior, Graff, Hermes, Loro Piana, Louis Vuitton, Manolo Blahnik, Oscar de la Renta, Vertu and others;
- Recreation and leisure facilities, including an 18-hole golf course, swimming pools, private cabanas and two full service spas and salons;
- Two showrooms; and
- Three nightclubs and a beach club.

In response to our evaluation of our Las Vegas Operations and the reactions of our guests, we have made and expect to continue to make enhancements and refinements to this resort complex.

Macau Operations

We operate Wynn Macau I Encore under a 20-year casino concession agreement granted by the Macau government in June 2002.

Our Macau resort complex features:

- Approximately 265,000 square feet of casino space, offering 24-hour gaming and a full range of games, including private gaming salons, sky casinos and a poker pit;
- Two luxury hotel towers with a total of 1,008 spacious rooms and suites;
- Casual and fine dining in eight restaurants;
- Approximately 54,600 square feet of high-end, brand-name retail shopping, including stores and boutiques by Bvlgari, Cartier, Chanel, Dior, Dunhill, Ermenegildo Zegna, Ferrari, Giorgio Armani, Graff, Gucci, Hermes, Hugo Boss, Jaeger LeCoultre, Louis Vuitton, Miu Miu, Piaget, Prada, Rolex, Tiffany, Tudor, Vacheron Constantin, Van Cleef & Arpels, Versace, Vertu, and others;
- Recreation and leisure facilities, including two health clubs and spas, a salon, a pool; and
- Lounges and meeting facilities.

In response to our evaluation of our Macau Operations and the reactions of our guests, we have made and expect to continue to make enhancements and refinements to this resort complex.

Future Development

Approximately 142 acres of land comprising our Las Vegas Operations is currently improved with a golf course. While we may develop this property in the future, we have no immediate plans to do so.

In September 2011, Palo Real Estate Company Limited and Wynn Resorts (Macau) S.A., each an indirect subsidiary of Wynn Macau, Limited, formally accepted the terms and conditions of a draft land concession contract from the Macau government for approximately 51 acres of land in the Cotai area of Macau. In December 2011, we made a \$62.5 million initial deposit under the draft land concession contract. On May 2, 2012, the land concession contract was gazetted by the government of Macau, evidencing the final step in the granting of the land concession. We are constructing a full scale integrated resort containing a casino, luxury hotel, convention, retail, entertainment and food and beverage offerings on this land. We estimate the project budget to be in the range of \$3.5 billion to \$4.0 billion. We expect to establish a guaranteed maximum price for the project in the first half of 2013.

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Results of Operations

The table below presents our net revenues (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Net revenues				
Macau Operations	\$ 910,451	\$ 951,368	\$ 2,768,795	\$ 2,793,555
Las Vegas Operations	388,044	346,936	1,096,405	1,132,374
	<u>\$ 1,298,495</u>	<u>\$ 1,298,304</u>	<u>\$ 3,865,200</u>	<u>\$ 3,925,929</u>

Reliance on only two resort complexes (in two geographic regions) for our operating cash flow exposes us to certain risks that competitors, whose operations are more diversified, may be better able to control. In addition to the concentration of operations in two resort complexes, many of our customers are premium gaming customers who wager on credit, thus exposing us to credit risk. High-end gaming also increases the potential for variability in our results.

Operating Measures

Certain key operating statistics specific to the gaming industry are included in our discussion of our operational performance for the periods for which a Condensed Consolidated Statement of Income is presented. There are two methods used to calculate win percentage in the casino industry. In Las Vegas and in the general casino in Macau, customers usually purchase cash chips at the gaming tables. The cash and net markers used to purchase the cash chips are deposited in the gaming table's drop box. This is the base of measurement that we use in the casino at our Las Vegas Operations and in the general casino at our Macau Operations for calculating win percentage.

In our VIP casino in Macau, customers primarily purchase non-negotiable chips, commonly referred to as rolling chips, from the casino cage and there is no deposit into a gaming table drop box from chips purchased from the cage. Non-negotiable chips can only be used to make wagers. Winning wagers are paid in cash chips. The loss of the non-negotiable chips in the VIP casino is recorded as turnover and provides a base for calculating VIP casino win percentage. Because of this difference in chip purchase activity, the measurement base used in the general casino is not the same that is used in the VIP casino. It is customary in Macau to measure VIP casino play using this rolling chip method. We expect our win as a percentage of turnover to be within the range of 2.7% to 3.0%.

The measurement method in Las Vegas and in the general casino in Macau tracks the initial purchase of chips at the table while the measurement method in our VIP casino in Macau tracks the sum of all losing wagers. Accordingly, the base measurement in the VIP casino is much larger than Las Vegas and the general casino in Macau. As a result, the expected win percentage with the same amount of gaming win is smaller in the VIP casino in Macau when compared to Las Vegas and the general casino in Macau.

Even though both use the same measurement method, we experience different table games win percentages in Las Vegas and the general casino in Macau. This difference is primarily due to the difference in the mix of table games and customer playing habits between the two casinos. Each type of table game has its own theoretical win percentage. Our expected table games win percentage in Las Vegas is 21% to 24%. Our expected table games win percentage in the general casino at Wynn Macau, which we have periodically revised based on our experience since the opening of the Encore at Wynn Macau expansion, is 28% to 30%.

Below are definitions of the statistics discussed:

- Drop is the amount of cash and net markers issued that are deposited in a gaming table's drop box.

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- Turnover is the sum of all losing rolling chip wagers within our Wynn Macau VIP program.
- Rolling chips are identifiable chips that are used to track VIP wagering volume (turnover) for purposes of calculating incentives.
- Table games win is the amount of drop or turnover that is retained and recorded as casino revenue.
- Slot win is the amount of handle (representing the total amount wagered) that is retained by us and is recorded as casino revenue.
- Average Daily Rate ("ADR") is calculated by dividing total room revenue including the retail value of promotional allowances (less service charges, if any) by total rooms occupied including complimentary rooms.
- Revenue per Available Room ("REVPAR") is calculated by dividing total room revenue including the retail value of promotional allowances (less service charges, if any) by total rooms available.
- Occupancy is calculated by dividing total occupied rooms including complimentary rooms by total rooms available.

Financial results for the three months ended September 30, 2012 compared to the three months ended September 30, 2011.

Revenues

Net revenues for the three months ended September 30, 2012, were comprised of \$1,012.8 million in casino revenues (78% of total net revenues) and \$285.7 million of net non-casino revenues (22% of total net revenues). Net revenues for the three months ended September 30, 2011, are comprised of \$1,020.2 million in casino revenues (78.6% of total net revenues) and \$278.1 million of net non-casino revenues (21.4% of total net revenues).

Casino revenues are comprised of the net win from our table games and slot machine operations. Casino revenues for the three months ended September 30, 2012, of \$1,012.8 million represents a \$7.4 million (0.7%) decrease from casino revenues of \$1,020.2 million for the three months ended September 30, 2011. For the three months ended September 30, 2012, our Las Vegas Operations experienced a \$28.7 million (22.6%) increase in casino revenues to \$155.6 million, compared to the prior year quarter due to an increase in our table games win percentage (before discounts). Our Macau Operations experienced a \$36.1 million (4%) decrease in casino revenues to \$857.2 million for the three months ended September 30, 2012, compared to the prior year quarter due primarily to lower turnover in the VIP casino and lower slot machine handle associated with our premium customers.

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The table below sets forth key gaming statistics related to our Las Vegas and Macau operations.

	Three Months Ended September 30,					
	2012		2011		Increase/ (Decrease)	Percent Change
	(amounts in thousands)					
Las Vegas Operations:						
Drop	\$	682,349	\$	603,485	\$ 78,864	13.1%
Table games win %		21.9%		18.3%	3.6pts	—
Slot machine handle	\$	723,514	\$	673,825	\$ 49,689	7.4%
Slot machine win	\$	46,326	\$	43,186	\$ 3,140	7.3%
Macau Operations:						
VIP Casino						
VIP turnover	\$	27,622,665	\$	31,439,153	\$ (3,816,488)	(12.1)%
VIP win as a % of turnover		3.08%		2.95%	0.13pts	—
General Casino:						
Drop	\$	686,122	\$	704,274	\$ (18,152)	(2.6)%
Table games win %		30.8%		27.7%	3.1pts	—
Slot machine handle	\$	983,705	\$	1,133,943	\$ (150,238)	(13.2)%
Slot machine win	\$	54,412	\$	64,494	\$ (10,082)	(15.6)%

For the three months ended September 30, 2012, room revenues were \$119.6 million, a decrease of \$0.5 million (0.4%) compared to prior year quarter room revenue of \$120.1 million. Room revenue at our Las Vegas Operations increased approximately \$1.3 million (1.4%) to \$91 million compared to the prior year quarter. ADR at our Las Vegas Operations has increased compared to the prior year quarter as we maintained our room rates in an effort to attract customers who would take advantage of all aspects of our resort. Room revenue at our Macau Operations decreased \$1.8 million (5.7%) to \$28.6 million compared to the prior year quarter due primarily to a decrease in average room rates.

The table below sets forth key operating measures related to room revenue.

	Three Months Ended September 30,	
	2012	2011
Average Daily Rate		
Las Vegas	\$ 244	\$ 240
Macau	307	315
Occupancy		
Las Vegas	85.7%	88.3%
Macau	94.2%	93.7%
REVPAR		
Las Vegas	\$ 209	\$ 212
Macau	289	295

Other non-casino revenues for the three months ended September 30, 2012, included food and beverage revenues of \$156.6 million, retail revenues of \$63.2 million, entertainment revenues of \$21.6 million, and other revenues from outlets, including the spa and salon, of \$16.3 million. Other non-casino revenues for the three months ended September 30, 2011, included food and beverage revenues of \$142.9 million, retail revenues of \$67.2 million, entertainment revenues of \$21.9 million, and other revenues from outlets such as the spa and salon, of \$16.4 million. Food and beverage revenues at our Las Vegas Operations increased \$13.3 million, while our Macau Operations increased \$0.4 million, as compared to the prior year quarter. The increase in Las Vegas is due primarily to strong business in our beach club and nightclubs. Retail revenues at our Macau Operations

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decreased \$3.9 million due to lower sales in some of our watch stores, while retail revenues at our Las Vegas Operations declined only \$0.1 million despite the reduction in retail square footage from the reconfiguration of the Encore retail area.

Departmental, Administrative and Other Expenses

For the three months ended September 30, 2012, departmental expenses included casino expenses of \$653.9 million, room expenses of \$31.9 million, food and beverage expenses of \$80.7 million, and entertainment, retail and other expenses of \$46.9 million. Also included are general and administrative expenses of \$115.8 million and a charge of \$5.3 million for the provision for doubtful accounts receivable. For the three months ended September 30, 2011, departmental expenses included casino expenses of \$679.5 million, room expenses of \$31.1 million, food and beverage expenses of \$73.3 million, and entertainment, retail and other expenses of \$52.2 million. Also included for the three months ended September 30, 2011, are general and administrative expenses of \$107.9 million and \$4.3 million charged as a provision for doubtful accounts receivable. Casino expenses decreased for the three months ended September 30, 2012, from the prior year quarter due primarily to lower gaming taxes and junket commissions commensurate with the decrease in gaming revenues at our Macau Operations. Food and beverage expenses increased over the prior year quarter primarily due to additional nightclub promotional costs in Las Vegas. The decrease in entertainment, retail and other expenses was driven by the conversion of certain owned retail stores to leased outlets in Macau resulting in a lower cost of sales. General and administrative expense increased primarily due to legal and other costs incurred related to the share redemption and litigation with a former stockholder, as well as development costs.

Depreciation and amortization

Depreciation and amortization for the three months ended September 30, 2012, was \$94.3 million compared to \$100.5 million for the three months ended September 30, 2011. This decrease is primarily due to assets with a 5-year life at Wynn Macau being fully depreciated as of September 2011.

During the construction of our properties, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations were capitalized. Once these properties opened, their assets were placed into service and we began recognizing the associated depreciation expense. Depreciation expenses will continue throughout the estimated useful lives of these assets. In addition, we continually evaluate the useful life of our property and equipment, intangibles and other assets and adjust them when warranted.

The maximum useful life of assets at Wynn Macau is the remaining life of the gaming concession or land concession, which currently expire in June 2022 and August 2029, respectively. Consequently, depreciation related to Wynn Macau is charged on an accelerated basis when compared to our Las Vegas Operations.

Property charges and other

Property charges and other for the three months ended September 30, 2012, were \$22.7 million compared to \$9.7 million for the three months ended September 30, 2011. For the three months ended September 30, 2012, property charges and other related primarily to a remodel of a Las Vegas restaurant, charges related to the termination of a Las Vegas show which will end its run in November 2012, and miscellaneous renovations and abandonments at our resorts. Property charges and other for the three months ended September 30, 2011 primarily include miscellaneous renovations and abandonments at our resorts.

In response to our evaluation of our resorts and the reactions of our guests, we continue to make enhancements and refinements at our resorts.

Other non-operating costs and expenses

Interest income was \$3.8 million for the three months ended September 30, 2012, compared to \$2.7 million for the three months ended September 30, 2011. During 2012 and 2011, our short-term investment strategy has

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been to preserve capital while retaining sufficient liquidity. While the majority of our short-term investments were primarily in money market accounts and time deposits with a maturity of three months or less, beginning in April 2011, we have invested in certain corporate bond securities and commercial paper.

Interest expense was \$75.1 million, net of capitalized interest of \$0.5 million, for the three months ended September 30, 2012, compared to \$57.5 million for the three months ended September 30, 2011. No interest was capitalized during the three months ended September 30, 2011. Our interest expense increased compared to the prior year quarter primarily due to the issuance of the \$1.94 billion Redemption Note by Wynn Resorts, the Wynn Las Vegas \$900 million 5³/₈% first mortgage notes in March 2012, and the increase in the Wynn Macau term loan offset by the reduction of \$370.9 million in Wynn Las Vegas term loan borrowings, all as described in Notes to Condensed Consolidated Financial Statements, Note 9 – "Long-Term Debt".

Changes in the fair value of our interest rate swaps are recorded as an increase (decrease) in swap fair value in each period. In June 2012, we terminated the Wynn Las Vegas interest rate swap for a payment of \$2.4 million and the Wynn Macau interest rate swap matured. For the three months ended September 30, 2011, we recorded a gain of \$4.1 million resulting from the increase in the fair value of interest rate swaps between June 30, 2011 and September 30, 2011. For further information on our interest rate swaps, see Item 3 – "Quantitative and Qualitative Disclosures about Market Risk."

As described in Note 9 of our Notes to Condensed Consolidated Financial Statements, we amended our Wynn Macau Credit Facilities in July 2012 and terminated the Wynn Las Vegas Credit Agreement in September 2012. In connection with amending the Wynn Macau Credit Facilities, we expensed \$17.7 million of deferred financing costs and third party fees. In connection with the termination of the Wynn Las Vegas credit agreement, we expensed \$2 million of deferred financing costs and third party fees.

Income Taxes

For the three months ended September 30, 2012 and 2011, we recorded a tax benefit of \$7.6 million and tax expense of \$4.3 million, respectively. Our income tax benefit is primarily related to a decrease in our deferred tax liabilities reduced by foreign taxes assessable on the dividends of Wynn Macau, S.A. and foreign tax provisions related to our international marketing offices. Since June 30, 2010, we have no longer considered our portion of the tax earnings and profits of Wynn Macau, Limited to be permanently invested. No additional U.S. tax provision has been made with respect to amounts not considered permanently invested as we anticipate that U.S. foreign tax credits should be sufficient to eliminate any U.S. tax provision relating to repatriation. We have not provided deferred U.S. income taxes or foreign withholding taxes on temporary differences as these amounts are permanently reinvested. For the three months ended September 30, 2012 and 2011, we recognized income tax benefits related to excess tax deductions associated with stock compensation costs of \$0.6 million and \$2.8 million, respectively.

Wynn Macau, S.A. has received an exemption from Macau's 12% Complementary Tax on casino gaming profits through December 31, 2015. Accordingly, we were exempt from the payment of \$20.3 million and \$22.8 million in such taxes during the three months ended September 30, 2012 and 2011, respectively. Our non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau Special Gaming tax and other levies together totaling 39% in accordance with our concession agreement.

In April 2012, we reached an agreement with the Appellate division of the IRS regarding issues raised during the examination of our 2006 through 2009 U.S. income tax returns. The issues for consideration by the Appellate division were temporary differences related to the treatment of discounts extended to certain Las Vegas casino customers wagering on credit, the deduction of certain costs incurred during the development and construction of Encore at Wynn Las Vegas and the appropriate tax depreciation recovery periods applicable to certain assets. The settlement with the Appellate division does not impact our unrecognized tax benefits. The settlement of the 2006 through 2009 examination issues resulted in a cash tax payment of \$1.3 million and the utilization of \$3.1 million and \$0.9 million in foreign tax credit and general business credit carryforwards, respectively.

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In July 2012, the Macau Finance Bureau commenced an examination of the 2008 Macau income tax return of Wynn Macau, S.A. Since the examination is in its initial stages, we are unable to determine if it will conclude within the next 12 months. We believe that our liability for uncertain tax positions is adequate with respect to the 2008 examination year.

Net income attributable to noncontrolling interests

In October 2009, Wynn Macau, Limited, our indirect wholly owned subsidiary and the developer, owner and operator of Wynn Macau, listed its ordinary shares of common stock on The Stock Exchange of Hong Kong Limited. Wynn Macau, Limited sold 1,437,500,000 shares (27.7%) of its common stock through an initial public offering. We recorded net income attributable to noncontrolling interests of \$53.1 million for the three months ended September 30, 2012, compared to \$58.1 million for the three months ended September 30, 2011. This represents the noncontrolling interests' share of net income from Wynn Macau, Limited during each quarter.

Financial results for the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011.

Revenues

Net revenues for the nine months ended September 30, 2012, were comprised of \$3,015.5 million in casino revenues (78% of total net revenues) and \$849.7 million of net non-casino revenues (22% of total net revenues). Net revenues for the nine months ended September 30, 2011, are comprised of \$3,108.6 million in casino revenues (79.2% of total net revenues) and \$817.4 million of net non-casino revenues (20.8% of total net revenues).

Casino revenues are comprised of the net win from our table games and slot machine operations. Casino revenues for the nine months ended September 30, 2012, of \$3,015.5 million represents a \$93.1 million (3%) decrease from casino revenues of \$3,108.6 million for the nine months ended September 30, 2011.

For the nine months ended September 30, 2012, our Las Vegas Operations experienced a \$67.6 million (14.1%) decrease in casino revenues to \$411.8 million, compared to the prior year period due to a decrease in our table games win percentage (before discounts) during the first half of 2012. Our Macau Operations experienced a \$25.5 million (1%) decrease in casino revenues to \$2,603.7 million for the nine months ended September 30, 2012, compared to the prior year period due primarily to lower turnover in the VIP casino and lower slot machine handle associated with our premium customers.

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The table below sets forth key gaming statistics related to our Las Vegas and Macau operations.

	Nine Months Ended September 30,			
	2012	2011	Increase/ (Decrease)	Percent Change
(amounts in thousands)				
Las Vegas Operations:				
Drop	\$ 1,912,430	\$ 1,772,201	\$ 140,229	7.9%
Table games win %	20.1%	25.4%	(5.3)pts	—
Slot machine handle	\$ 2,150,263	\$ 2,078,129	\$ 72,134	3.5%
Slot machine win	\$ 129,812	\$ 127,188	\$ 2,624	2.1%
Macau Operations:				
VIP Casino				
VIP turnover	\$ 91,512,158	\$ 93,386,297	\$ (1,874,139)	(2.0)%
VIP win as a % of turnover	2.81%	2.85%	(0.04)pts	—
General Casino				
Drop	\$ 2,065,323	\$ 2,077,029	\$ (11,706)	(0.6)%
Table games win %	30.3%	27.8%	2.5pts	—
Slot machine handle	\$ 3,610,782	\$ 4,101,458	\$ (490,676)	(12.0)%
Slot machine win	\$ 191,294	\$ 212,465	\$ (21,171)	(10.0)%

For the nine months ended September 30, 2012, room revenues were \$362 million, an increase of \$6.5 million (1.8%) compared to prior year period room revenue of \$355.5 million. Room revenue at our Las Vegas Operations increased approximately \$5.8 million (2.2%) to \$274.5 million compared to the prior year period. ADR at our Las Vegas Operations has increased as we maintained our room rates in an effort to attract customers who would take advantage of all aspects of our resort. Room revenue at our Macau Operations increased \$0.7 million (0.8%) to \$87.5 million compared to the prior year period due to an increase in occupancy and in the average daily room rate during the first half of 2012.

The table below sets forth key operating measures related to room revenue.

	Nine Months Ended September 30,	
	2012	2011
Average Daily Rate		
Las Vegas	\$ 251	\$ 240
Macau	316	312
Occupancy		
Las Vegas	84.2%	88.4%
Macau	91.8%	91.0%
REVPAR		
Las Vegas	\$ 211	\$ 212
Macau	290	284

Other non-casino revenues for the nine months ended September 30, 2012, included food and beverage revenues of \$452.8 million, retail revenues of \$192.8 million, entertainment revenues of \$60.8 million, and other revenues from outlets, including the spa and salon, of \$54.8 million. Other non-casino revenues for the nine months ended September 30, 2011, included food and beverage revenues of \$419.5 million, retail revenues of \$191.5 million, entertainment revenues of \$61.5 million, and other revenues from outlets such as the spa and salon, of \$53.9 million. Food and beverage revenues increased primarily due to the strength of our beach club and nightclub business at our Las Vegas Operations. Retail revenues at our Macau Operations increased \$3 million, while retail revenues at our Las Vegas Operations decreased \$1.7 million. The increase at Wynn Macau

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is due to strong same store sales growth combined with new stores from the first half of 2012. Retail revenues at our Las Vegas operations decreased as we reconfigured the Encore retail area and are in the process of rebranding several retail outlets. Entertainment revenues decreased over the prior year period primarily due to a loss of revenues from the Sinatra "Dance with Me" show which ended its run in Las Vegas on April 23, 2011.

Departmental, Administrative and Other Expenses

For the nine months ended September 30, 2012, departmental expenses included casino expenses of \$1,974.2 million, room expenses of \$95.2 million, food and beverage expenses of \$235.6 million, and entertainment, retail and other expenses of \$144.6 million. Also included are general and administrative expenses of \$321.5 million and \$6.1 million charged as a provision for doubtful accounts receivable. For the nine months ended September 30, 2011, departmental expenses included casino expenses of \$1,988.3 million, room expenses of \$93.6 million, food and beverage expenses of \$214.2 million, and entertainment, retail and other expenses of \$162.6 million. Also included for the nine months ended September 30, 2011, are general and administrative expenses of \$287.5 million and \$18.3 million charged as a provision for doubtful accounts receivable. Casino expenses have decreased for the nine months ended September 30, 2012, over the prior year period due primarily to lower gaming taxes and junket commissions commensurate with the decrease in gaming revenues. Food and beverage expenses increased over the prior year period primarily due to additional nightclub promotional costs in Las Vegas. The decrease in entertainment, retail and other expenses was driven by the conversion of certain owned retail stores to leased outlets in Macau resulting in lower cost of sales. General and administrative expense increased primarily due to legal and other costs incurred related to the share redemption and litigation with a former stockholder, higher advertising costs, and pay rate increases. The provision for doubtful accounts decreased during the nine months ended September 30, 2012 as we recorded an adjustment to our reserve estimates for casino accounts receivable based on the results of historical collection patterns and current collection trends.

Depreciation and amortization

Depreciation and amortization for the nine months ended September 30, 2012, was \$280.1 million compared to \$303.9 million for the nine months ended September 30, 2011. This decrease is primarily due to assets with a 5-year life at Wynn Macau being fully depreciated as of September 2011.

During the construction of our properties, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations were capitalized. Once these properties opened, their assets were placed into service and we began recognizing the associated depreciation expense. Depreciation expenses will continue throughout the estimated useful lives of these assets. In addition, we continually evaluate the useful life of our property and equipment, intangibles and other assets and adjust them when warranted.

The maximum useful life of assets at Wynn Macau is the remaining life of the gaming concession or land concession, which currently expire in June 2022 and August 2029, respectively. Consequently, depreciation related to Wynn Macau is charged on an accelerated basis when compared to our Las Vegas Operations.

Property charges and other

Property charges and other for the nine months ended September 30, 2012, were \$36.5 million compared to \$124.1 million for the nine months ended September 30, 2011. For the nine months ended September 30, 2012, property charges and other related primarily to a remodel of a Las Vegas restaurant, charges related to the cancellation of a Las Vegas show which will end its run in November 2012, and miscellaneous renovations and abandonments at our resorts. Property charges and other for the nine months ended September 30, 2011 includes a charge of \$108.5 million reflecting the present value of a charitable contribution made by Wynn Macau to the University of Macau Development Foundation. This contribution consists of a \$25 million payment made in May 2011, and a commitment for additional donations of \$10 million each year for the calendar years 2012 through

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2022 inclusive, for a total of \$135 million. The amount reflected in our accompanying Condensed Consolidated Statements of Income has been discounted using our then estimated borrowing rate over the time period of the remaining committed payments. Property charges and other for the nine months ended September 30, 2011 also include the write off of certain costs related to a show that ended its run in Las Vegas and miscellaneous renovations and abandonments at our resorts.

In response to our evaluation of our resorts and the reactions of our guests, we continue to make enhancements and refinements at our resorts.

Other non-operating costs and expenses

Interest income was \$7.8 million for the nine months ended September 30, 2012, compared to \$4.6 million for the nine months ended September 30, 2011. During 2012 and 2011, our short-term investment strategy has been to preserve capital while retaining sufficient liquidity. While the majority of our short-term investments were primarily in money market accounts and time deposits with a maturity of six months or less, beginning in April 2011, we have invested in certain corporate bond securities and commercial paper which contributed to the increase in interest income.

Interest expense was \$211 million, net of capitalized interest of \$1 million, for the nine months ended September 30, 2012, compared to \$174 million for the nine months ended September 30, 2011. No interest was capitalized during the nine months ended September 30, 2011. Our interest expense increased compared to the prior year period primarily due to the issuance of the \$1.94 billion Redemption Note by Wynn Resorts, and the Wynn Las Vegas \$900 million 5 ³/₈% first mortgage notes in March 2012, offset by the reduction of \$370.9 million in Wynn Las Vegas term loan borrowings, all as described in Note 9 of our Notes to Condensed Consolidated Financial Statements.

Changes in the fair value of our interest rate swaps and any applicable termination payments are recorded as an increase (decrease) in swap fair value in each period. We recorded a gain of \$4.9 million for the nine months ended September 30, 2012, resulting from the increase in the fair value of the interest rate swaps that existed during the nine months ended September 30, 2012. In June 2012, we terminated the Wynn Las Vegas interest rate swap for a payment of \$2.4 million and the Wynn Macau interest rate swap matured. For the nine months ended September 30, 2011, we recorded a gain of \$11.5 million resulting from the increase in the fair value of interest rate swaps between December 31, 2010 and September 30, 2011. For further information on our interest rate swaps, see Item 3 – "Quantitative and Qualitative Disclosures about Market Risk."

On March 12, 2012, Wynn Las Vegas entered into an eighth amendment to its Amended and Restated Credit Agreement (the "Wynn Las Vegas Credit Agreement"). In connection with this amendment Wynn Las Vegas prepaid all term loans under the Wynn Las Vegas Credit Agreement, terminated all of its revolving credit commitments that were due to expire in 2013, and terminated all but \$100 million of its revolving credit commitments expiring in 2015. In connection with this transaction, we expensed deferred financing fees of \$4.8 million.

As described in Note 9 of our Notes to Condensed Consolidated Financial Statements, we amended our Wynn Macau Credit Facilities in July 2012 and terminated the Wynn Las Vegas Credit Agreement in September 2012. In connection with amending the Wynn Macau Credit Facilities, we expensed \$17.7 million of deferred financing costs and third party fees. In connection with the termination of the Wynn Las Vegas credit agreement, we expensed \$2 million of deferred financing costs and third party fees.

Income Taxes

For the nine months ended September 30, 2012 and 2011, we recorded a tax benefit of \$12.5 million and tax expense of \$11.6 million, respectively. Our income tax benefit is primarily related to a decrease in our deferred

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tax liabilities reduced by foreign taxes assessable on the dividends of Wynn Macau, S.A. and foreign tax provisions related to our international marketing offices. Since June 30, 2010, we have no longer considered our portion of the tax earnings and profits of Wynn Macau, Limited to be permanently invested. No additional U.S. tax provision has been made with respect to amounts not considered permanently invested as we anticipate that U.S. foreign tax credits should be sufficient to eliminate any U.S. tax provision relating to repatriation. We have not provided deferred U.S. income taxes or foreign withholding taxes on temporary differences as these amounts are permanently reinvested. For the nine months ended September 30, 2012 and 2011, we recognized income tax benefits related to excess tax deductions associated with stock compensation costs of \$1.8 million and \$10.5 million, respectively.

Wynn Macau, S.A. has received an exemption from Macau's 12% Complementary Tax on casino gaming profits through December 31, 2015. Accordingly, we were exempt from the payment of \$66.9 million and \$57.3 million in such taxes during the nine months ended September 30, 2012 and 2011, respectively. Our non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau Special Gaming tax and other levies together totaling 39% in accordance with our concession agreement.

In April 2012, we reached an agreement with the Appellate division of the IRS regarding issues raised during the examination of our 2006 through 2009 U.S. income tax returns. The issues for consideration by the Appellate division were temporary differences related to the treatment of discounts extended to certain Las Vegas casino customers wagering on credit, the deduction of certain costs incurred during the development and construction of Encore at Wynn Las Vegas and the appropriate tax depreciation recovery periods applicable to certain assets. The settlement with the Appellate division does not impact our unrecognized tax benefits. The settlement of the 2006 through 2009 examination issues resulted in a cash tax payment of \$1.3 million and the utilization of \$3.1 million and \$0.9 million in foreign tax credit and general business credit carryforwards, respectively.

In July 2012, the Macau Finance Bureau commenced an examination of the 2008 Macau income tax return of Wynn Macau, S.A. Since the examination is in its initial stages, we are unable to determine if it will conclude within the next 12 months. We believe that our liability for uncertain tax positions is adequate with respect to the 2008 examination year.

Net income attributable to noncontrolling interests

In October 2009, Wynn Macau, Limited, our indirect wholly owned subsidiary and the developer, owner and operator of Wynn Macau, listed its ordinary shares of common stock on The Stock Exchange of Hong Kong Limited. Wynn Macau, Limited sold 1,437,500,000 shares (27.7%) of its common stock through an initial public offering. We recorded net income attributable to noncontrolling interests of \$172.2 million for the nine months ended September 30, 2012, compared to \$144 million for the nine months ended September 30, 2011. This represents the noncontrolling interests' share of net income from Wynn Macau, Limited during each period.

Adjusted Property EBITDA

We use adjusted property EBITDA to manage the operating results of our segments. Adjusted property EBITDA is earnings before interest, taxes, depreciation, amortization, pre-opening costs, property charges and other, corporate expenses, intercompany golf course and water rights leases, stock-based compensation, and other non-operating income and expenses, and includes equity in income from unconsolidated affiliates. Adjusted property EBITDA is presented exclusively as a supplemental disclosure because we believe that it is widely used to measure the performance, and as a basis for valuation, of gaming companies. We use adjusted property EBITDA as a measure of the operating performance of our segments and to compare the operating performance of our properties with those of our competitors. We also present adjusted property EBITDA because it is used by some investors as a way to measure a company's ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplement to

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financial measures in accordance with U.S. generally accepted accounting principles ("GAAP"). In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including us, have historically excluded from their EBITDA calculations pre-opening expenses, property charges and corporate expenses that do not relate to the management of specific casino properties. However, adjusted property EBITDA should not be considered as an alternative to operating income as an indicator of our performance, as an alternative to cash flows from operating activities as a measure of liquidity, or as an alternative to any other measure determined in accordance with GAAP. Unlike net income, adjusted property EBITDA does not include depreciation or interest expense and therefore does not reflect current or future capital expenditures or the cost of capital. We have significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments, taxes and other non-recurring charges, which are not reflected in adjusted property EBITDA. Also, our calculation of adjusted property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

The following table summarizes adjusted property EBITDA (amounts in thousands) for our Las Vegas and Macau Operations as reviewed by management and summarized in Notes to Condensed Consolidated Financial Statements – Note 17 "Segment Information." That footnote also presents a reconciliation of adjusted property EBITDA to net income.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Adjusted Property EBITDA				
Macau Operations	\$ 292,161	\$ 295,960	\$ 884,144	\$ 883,139
Las Vegas Operations	110,390	85,134	293,193	349,954
	\$ 402,551	\$ 381,094	\$ 1,177,337	\$ 1,233,093

For the three months ended September 30, 2012, our Las Vegas Operations benefitted from stronger operating results primarily in the casino and food and beverage departments, while our Macau Operations were negatively impacted by lower turnover in the VIP casino.

For the nine months ended September 30, 2012, our Las Vegas Operations were negatively impacted by a lower than normal table games win percentage as discussed above. Our Macau Operations were negatively impacted by lower turnover in the VIP casino. Results for the nine months in Las Vegas and Macau were positively impacted by a credit taken to the provision for doubtful accounts as discussed above. Refer to the discussions above regarding the specific details of our results of operations.

Liquidity and Capital Resources

Cash Flow from Operations

Our operating cash flows primarily consist of our operating income generated by our Las Vegas and Macau operations (excluding depreciation and other non-cash charges), interest paid, and changes in working capital accounts such as receivables, inventories, prepaid expenses, and payables. Our table games play both in Macau and Las Vegas is a mix of cash play and credit play, while our slot machine play is conducted primarily on a cash basis. A significant portion of our table games revenue is attributable to the play of a limited number of premium international customers who wager on credit. The ability to collect these gaming receivables may impact our operating cash flow for the period. Our rooms, food and beverage, and entertainment, retail, and other revenue is conducted primarily on a cash basis or as a trade receivable. Accordingly, operating cash flows will be impacted by changes in operating income and accounts receivables.

Net cash provided by operations for the nine months ended September 30, 2012, was \$989.2 million compared to \$1,149.1 million provided by operations for the nine months ended September 30, 2011. Cash flow from operations decreased due to lower casino department profitability and changes in ordinary working capital accounts such as accrued expenses.

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Capital Resources

At September 30, 2012, we had approximately \$2.3 billion of cash and cash equivalents and \$240.3 million of available for sale investments in foreign and domestic debt securities with maturities of up to 2 years. Our cash is available for operations, debt service and retirement, development activities, general corporate purposes and enhancements to our resorts. In addition, we have \$151.8 million of restricted cash for Cotai related construction and development costs. Of these amounts, Wynn Macau, Limited and its subsidiaries held \$1,202 million and \$67.1 million in cash and available for sale investments, respectively, of which we own 72.3%. If our portion of this cash was repatriated to the U.S. on September 30, 2012, approximately one-third of this amount would be subject to U.S. tax in the year of repatriation. Wynn Resorts, Limited, which is not a guarantor of the debt of its subsidiaries, held \$1,038.4 million and \$173.2 million of cash and available for sale investments, respectively. Wynn Las Vegas, LLC held cash balances of \$90.5 million.

On September 17, 2012, Wynn Las Vegas terminated its Amended and Restated Credit Agreement. No loans were outstanding at the time of termination. On September 18, 2012, Wynn Las Vegas distributed to Wynn Resorts, Limited, the Wynn Las Vegas golf course land, the related water rights, and \$700 million in cash.

On July 31, 2012, Wynn Macau expanded its availability under the senior secured bank facility to US\$2.3 billion equivalent, consisting of a US\$750 million equivalent fully funded senior secured term loan facility and a US\$1.55 billion equivalent senior secured revolving credit facility. Wynn Macau also has the ability to upsize the total senior secured facilities by an additional US\$200 million pursuant to the terms and provisions of the Amended Wynn Macau Credit Facilities. These borrowings were used to refinance Wynn Macau's existing indebtedness, and will be used to fund the design, development, construction and pre-opening expenses of Wynn Cotai, and for general corporate purposes.

We believe that cash flow from operations, availability under our bank credit facility and our existing cash balances will be adequate to satisfy our anticipated uses of capital for the remainder of 2012. If any additional financing became necessary, we cannot provide assurance that future borrowings will be available.

Cash and cash equivalents include investments in money market funds, domestic and foreign bank time deposits and commercial paper, all with maturities of less than 90 days.

Investing Activities

Capital expenditures were approximately \$168.3 million for the nine months ended September 30, 2012, which included a one-time payment of \$50 million in consideration of an unrelated third party's relinquishment of certain rights in and to any future development on the Cotai land as well as approximately \$35 million of site preparation costs for our Cotai land and various renovations at our resorts. Capital expenditures for the nine months ended September 30, 2011, were approximately \$85.8 million and related primarily to the room and suite remodel at Wynn Las Vegas.

Financing Activities

Las Vegas Operations

On March 12, 2012, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. (together the "Issuers") issued, in a private offering, \$900 million aggregate principal amount of 5 ³/₈% First Mortgage Notes due 2022 (the "2022 Notes") pursuant to an Indenture, dated as of March 12, 2012 (the "2022 Indenture"). A portion of the proceeds were used to repay all amounts outstanding under the Wynn Las Vegas term loan facilities. In October 2012, the Issuers commenced an offer to exchange all of the 2012 notes for notes registered under the Securities Act of 1933, as amended. The exchange offer closed on November 6, 2012.

The 2022 Notes will mature on March 15, 2022 and bear interest at the rate of 5 ³/₈% per annum. The Issuers may redeem all or a portion of the 2022 Notes at any time on or after March 15, 2017, at a premium

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decreasing ratably to zero, plus accrued and unpaid interest. In addition, prior to March 15, 2015, the Issuers may redeem up to 35% of the aggregate principal amount of the 2022 Notes with the net proceeds of one or more qualified equity contributions made to the Issuers by their parent, Wynn Resorts, Limited. The 2022 Notes are also subject to mandatory redemption requirements imposed by gaming laws and regulations of gaming authorities in Nevada.

The 2022 Indenture contains covenants limiting the Issuers' and the Issuers' restricted subsidiaries' ability to: pay dividends or distributions or repurchase equity; incur additional debt; make investments; create liens on assets to secure debt; enter into transactions with affiliates; issue stock of, or member's interests in, subsidiaries; enter into sale-leaseback transactions; engage in other businesses; merge or consolidate with another company; transfer and sell assets; issue disqualified stock; create dividend and other payment restrictions affecting subsidiaries; and designate restricted and unrestricted subsidiaries. These covenants are subject to a number of important and significant limitations, qualifications and exceptions.

The 2022 Notes rank *pari passu* in right of payment with the Issuers' outstanding 7⁷/₈% First Mortgage Notes due 2017 (the "2017 Notes"), the 7⁷/₈% First Mortgage Notes due 2020 ("7⁷/₈% 2020 Notes") and the 7³/₄% First Mortgage Notes due 2020 (the "7³/₄% 2020 Notes" and, together with the 2017 Notes and the 7⁷/₈% 2020 Notes, the "Existing Notes").

On March 12, 2012, Wynn Las Vegas, LLC entered into an eighth amendment ("Amendment No. 8") to its Amended and Restated Credit Agreement (the "Wynn Las Vegas Credit Agreement"). Amendment No. 8 amends the Wynn Las Vegas Credit Agreement to, among other things, permit the issuance of the 2022 Notes. Concurrently with the issuance of the 2022 Notes, Wynn Las Vegas prepaid all term loans under the Wynn Las Vegas Credit Agreement, terminated all of its revolving credit commitments that were due to expire in 2013, and terminated all but \$100 million of its revolving credit commitments expiring in 2015. In connection with this transaction, Wynn Las Vegas expensed deferred financing costs of \$4.8 million.

On September 17, 2012, Wynn Las Vegas terminated the Wynn Las Vegas Credit Agreement. No loans were outstanding under the Wynn Las Vegas Credit Agreement at the time of termination. Prior to such termination, certain letters of credit in which lenders had participated pursuant to the Wynn Las Vegas Credit Agreement were reallocated to a separate, unsecured letter of credit facility provided by Deutsche Bank, A.G. Wynn Las Vegas, LLC did not incur any early termination penalties in connection with the termination.

In connection with the termination, we expensed \$2.0 million of previously deferred financing costs and third party fees related to the Wynn Las Vegas Credit Agreement.

Macau Operations

During the nine months ended September 30, 2012, we repaid \$150.4 million of borrowings under the Wynn Macau Revolver.

On July 31, 2012, Wynn Macau, amended and restated its credit facilities, dated September 14, 2004 (as so amended and restated, the "Amended Wynn Macau Credit Facilities"), and appointed Bank of China Limited, Macau Branch as intercreditor agent, facilities agent and security agent. The Amended Wynn Macau Credit Facilities took effect on July 31, 2012 and expand availability under Wynn Macau's senior secured bank facility to US\$2.3 billion equivalent, consisting of a US\$750 million equivalent fully funded senior secured term loan facility and a US\$1.55 billion equivalent senior secured revolving credit facility. Wynn Macau also has the ability to upsize the total senior secured facilities by an additional US\$200 million pursuant to the terms and provisions of the Amended Wynn Macau Credit Facilities. Borrowings under the Amended Wynn Macau Credit Facilities, which consist of both Hong Kong Dollar and United States Dollar tranches, were used to refinance Wynn Macau's existing indebtedness, and will be used to fund the design, development, construction and pre-opening expenses of Wynn Cotai, and for general corporate purposes.

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The term loan facility matures in July 2018; and the revolving credit facility matures in July 2017. There are no amounts outstanding under the revolving credit facility. The principal amount of the term loan is required to be repaid in two equal installments in July 2017 and July 2018. The senior secured facilities will bear interest for the first six months after closing at LIBOR or HIBOR plus a margin of 2.50% and thereafter will be subject to LIBOR or HIBOR plus a margin of between 1.75% to 2.50% based on Wynn Macau's leverage ratio.

Borrowings under the Amended Wynn Macau Credit Facilities are guaranteed by Palo Real Estate Company Limited ("Palo"), a subsidiary of Wynn Macau, S.A., and by certain subsidiaries of the Company that own equity interests in Wynn Macau, S.A., and are secured by substantially all of the assets of Wynn Macau, S.A., the equity interests in Wynn Macau, S.A. and substantially all of the assets of Palo.

In connection with amending the Wynn Macau Credit Facilities, we expensed \$17.7 million and capitalized \$32.9 million of financing costs.

Wynn Resorts Redemption Price Promissory Note

Based on the Board of Directors' finding of "unsuitability," on February 18, 2012, we redeemed and cancelled Aruze USA, Inc.'s 24,549,222 shares of Wynn Resorts' common stock. Following a finding of "unsuitability," our articles of incorporation authorize redemption at "fair value" of the shares held by unsuitable persons. We engaged an independent financial advisor to assist in the fair value calculation and concluded that a discount to the then current trading price was appropriate because of, among other things, restrictions on most of the shares which are subject to the terms of an existing stockholder agreement. Pursuant to the articles of incorporation, we issued the Redemption Price Promissory Note (the "Redemption Note") to Aruze USA, Inc., a former stockholder and related party, in redemption of the shares. The Redemption Note has a principal amount of approximately \$1.94 billion, matures on February 18, 2022 and bears interest at the rate of 2% per annum, payable annually in arrears on each anniversary of the date of the Redemption Note. We may, in our sole and absolute discretion, at any time and from time to time, and without penalty or premium, prepay the whole or any portion of the principal or interest due under the Redemption Note. In no instance shall any payment obligation under the Redemption Note be accelerated except in the sole and absolute discretion of Wynn Resorts or as specifically mandated by law. The indebtedness evidenced by the Redemption Note is and shall be subordinated in right of payment, to the extent and in the manner provided in the Redemption Note, to the prior payment in full of all existing and future obligations of Wynn Resorts and any of its affiliates in respect of indebtedness for borrowed money of any kind or nature.

We recorded the fair value of the Redemption Note at its estimated present value of approximately \$1.94 billion in accordance with applicable accounting guidance. In determining this fair value, we considered the stated maturity of the Redemption Note, its stated interest rate, and the uncertainty of the related cash flows of the Redemption Note as well as the potential effects of the following: uncertainties surrounding the potential outcome and timing of pending litigation with Aruze USA, Inc. (see Note 15 to our Notes to Condensed Consolidated Financial Statements); the outcome of on-going investigations by the Nevada Gaming Control Board; and other potential legal and regulatory actions. In addition, in the furtherance of various future business objectives, we considered our ability, at our sole option, to prepay the Redemption Note at any time in accordance with its terms without penalty. Accordingly, we reasonably determined that the estimated life of the Redemption Note could be less than the contractual life of the Redemption Note. When considering the appropriate rate of interest to be used to determine fair value for accounting purposes and in light of the uncertainty in the timing of the cash flows, we used observable inputs from a range of trading values of financial instruments with lives similar to the estimated life of the Redemption Note. As a result of this analysis, we concluded the Redemption Note's stated rate of 2% approximated a market rate.

Off Balance Sheet Arrangements

We have not entered into any transactions with special purpose entities nor do we engage in any derivatives except for floating-for-fixed interest rate swaps described under Item 3, Quantitative and Qualitative Disclosures About Market Risk. We do not have any retained or contingent interest in assets transferred to an unconsolidated entity. At September 30, 2012, we had unsecured outstanding letters of credit totaling \$15.8 million.

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Contractual Obligations and Commitments

In March 2012, Wynn Las Vegas, LLC issued \$900 million in 5 ³/₈% first mortgage notes due 2022, repaid all amounts outstanding under the term loan facilities totaling \$370.9 million, reduced its revolving facilities to \$100 million, and in February 2012, Wynn Resorts issued a \$1.94 billion promissory note payable in 2022, all as described above. Additionally, in June 2012, the Wynn Macau Revolver matured with a zero outstanding balance, the Wynn Macau interest rate swap agreement matured, and the Wynn Las Vegas interest rate swap was terminated, all as described herein. In July 2012, Wynn Macau expanded its credit facilities to US\$2.3 billion equivalent, consisting of a US\$750 million equivalent fully funded senior secured term loan facility and a US\$1.55 billion equivalent senior secured revolving credit facility.

In September 2012, the Wynn Las Vegas Credit agreement was terminated and Wynn Macau entered into two interest rate swap agreements. Other than those transactions, there have been no material changes during the nine months ended September 30, 2012 to our contractual obligations or off balance sheet arrangements as disclosed in our Annual Report on Form 10-K for the year ended December 31, 2011.

Other Liquidity Matters

Wynn Resorts is a holding company and, as a result, our ability to pay dividends is highly dependent on our ability to obtain funds and our subsidiaries' ability to provide funds to us. Restrictions imposed by our Wynn Las Vegas and Wynn Macau debt instruments significantly restrict our ability to pay dividends. Specifically, Wynn Las Vegas, LLC and certain of its subsidiaries are restricted under the indentures governing the Existing Notes and the 2022 Notes from making certain "restricted payments" as defined in the indentures. These restricted payments include the payment of dividends or distributions to any direct or indirect holders of equity interests of Wynn Las Vegas, LLC. These restricted payments may not be made unless certain financial and non-financial criteria have been satisfied. While the Amended Wynn Macau Credit Facilities contains similar restrictions, Wynn Macau is currently in compliance with all requirements, namely satisfaction of its leverage ratio, which must be met in order to pay dividends and is presently able to pay dividends in accordance with the Amended Wynn Macau Credit Facilities.

Wynn Las Vegas, LLC intends to fund its operations and capital requirements from cash on hand and operating cash flow. We cannot assure you, however, that our Las Vegas Operations will generate sufficient cash flow from operations or the availability of additional indebtedness will be sufficient to enable us to service and repay Wynn Las Vegas, LLC's indebtedness and to fund its other liquidity needs. Similarly, we expect that Wynn Macau will fund Wynn Macau, S.A.'s debt service obligations with existing cash, operating cash flow and availability under the Amended Wynn Macau Credit Facilities. However, we cannot assure you that operating cash flows will be sufficient to do so. We may refinance all or a portion of our indebtedness on or before maturity. We cannot assure you that we will be able to refinance any of the indebtedness on acceptable terms or at all. Certain legal matters may also impact our liquidity. As described in our Notes to Condensed Consolidated Financial Statements, Note 15 – "Commitments and Contingencies", Elaine Wynn has submitted a cross claim against Steve Wynn and Kazuo Okada. The indentures for the Wynn Las Vegas, LLC 2022 Notes and Existing Notes (the "Indentures") provide that if Steve Wynn, together with certain related parties, in the aggregate beneficially owns a lesser percentage of the outstanding common stock of Wynn Resorts than are beneficially owned by any other person, a change of control will have occurred. If Elaine Wynn prevails in her cross claim, Steve Wynn would not beneficially own or control Elaine Wynn's shares and a change in control may result under our debt documents.

New business developments or other unforeseen events may occur, resulting in the need to raise additional funds. We continue to explore opportunities to develop additional gaming or related businesses in domestic and international markets. There can be no assurances regarding the business prospects with respect to any other opportunity. Any new development would require us to obtain additional financing. We may decide to conduct any such development through Wynn Resorts or through subsidiaries separate from the Las Vegas or Macau-related entities.

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The Company's articles of incorporation provide that, to the extent required by the gaming authority making the determination of unsuitability or to the extent the Board of Directors determines, in its sole discretion, that a person is likely to jeopardize the Company's or any affiliate's application for, receipt of, approval for, right to the use of, or entitlement to, any gaming license, shares of Wynn Resorts' capital stock that are owned or controlled by an unsuitable person or its affiliates are subject to redemption by the Company. The redemption price may be paid in cash, by promissory note or both, as required by the applicable gaming authority and, if not, as we elect. Any promissory note that we issue to an unsuitable person or its affiliate in exchange for its shares could increase our debt to equity ratio and would increase our leverage ratio.

On February 18, 2012, the Board of Directors of Wynn Resorts determined that Aruze USA, Inc., Universal Entertainment Corporation and Mr. Kazuo Okada are "unsuitable" under the provision of our articles of incorporation and redeemed and cancelled all of Aruze USA, Inc.'s, 24,549,222 shares of Wynn Resorts' common stock. Pursuant to our articles of incorporation, we issued the Redemption Note to Aruze USA, Inc. in redemption of the shares. For additional information on the redemption and the Redemption Note, see Notes to Condensed Consolidated Financial Statements, Note 15 – "Commitments and Contingencies."

Critical Accounting Policies

A description of our critical accounting policies is included in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2011. There has been no material change to these policies for the nine months ended September 30, 2012.

Recently Issued Accounting Standards

In July 2012, the Financial Accounting Standards Board ("FASB") issued an accounting standards update that is intended to simplify the guidance for testing the decline in the realizable value (impairment) of indefinite-lived intangible assets other than goodwill. The update allows for the consideration of qualitative factors in determining whether it is necessary to perform quantitative impairment tests. The effective date for this update is for the years and interim impairment tests performed for years beginning after September 15, 2012. This update is not expected to have a material impact on the Company's financial statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates and commodity prices.

Interest Rate Risks

One of our primary exposures to market risk is interest rate risk associated with our debt facilities that bear interest based on floating rates. We attempt to manage interest rate risk by managing the mix of long-term fixed rate borrowings and variable rate borrowings, and using hedging activities. We cannot assure you that these risk management strategies will have the desired effect, and interest rate fluctuations could have a negative impact on our results of operations. We do not use derivative financial instruments, other financial instruments or derivative commodity instruments for trading or speculative purposes.

Interest Rate Swap Information

In June 2012, the Wynn Macau swap matured and the Company terminated its Wynn Las Vegas swap for a payment of \$2.4 million.

On September 28, 2012, we entered into two interest rate swap agreements intended to hedge a portion of the underlying interest rate risk on borrowings under the Amended Wynn Macau Credit Facilities. Under the two swap agreements, we pay a fixed interest rate (excluding the applicable interest margin) of 0.73% on notional

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amounts corresponding to borrowings of HK\$3.95 billion (approximately US\$509.3 million) incurred under the Amended Wynn Macau Credit Facilities in exchange for receipts on the same amount at a variable interest rate based on the applicable HIBOR at the time of payment. These interest rate swaps fix the all-in interest rate on such amounts at 2.48% to 3.23%. These interest rate swap agreements mature in July 2017.

We measure the fair value of our interest rate swaps on a recurring basis. Changes in the fair values of these interest rate swaps for each reporting period recorded are recognized as an increase (decrease) in swap fair value in our Condensed Consolidated Statements of Income as the swaps did not qualify for hedge accounting. The fair value approximates the amount the Company would pay if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current and predictions of future interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability and fluctuation between periods. We adjust this amount by applying a non-performance valuation, considering our creditworthiness or the creditworthiness of our counterparties at each settlement date as applicable. As of December 31, 2011, the interest rate swap liabilities of \$7.3 million were included in other current accrued liabilities.

Interest Rate Sensitivity

As of September 30, 2012, approximately 95% of our long-term debt was based on fixed rates. Based on our borrowings as of September 30, 2012, an assumed 1% change in the variable rates would cause our annual interest cost to change by \$2.7 million.

Foreign Currency Risks

The currency delineated in Wynn Macau's concession agreement with the government of Macau is the Macau pataca. The Macau pataca, which is not a freely convertible currency, is linked to the Hong Kong dollar, and in many cases the two are used interchangeably in Macau. The Hong Kong dollar is linked to the U.S. dollar and the exchange rate between these two currencies has remained relatively stable over the past several years. However, the exchange linkages of the Hong Kong dollar and the Macau pataca, and the Hong Kong dollar and the U.S. dollar, are subject to potential changes due to, among other things, changes in Chinese governmental policies and international economic and political developments.

If the Hong Kong dollar and the Macau pataca are not linked to the U.S. dollar in the future, severe fluctuations in the exchange rate for these currencies may result. We cannot assure you that the current rate of exchange fixed by the applicable monetary authorities for these currencies will remain at the same level.

Because many of Wynn Macau's payment and expenditure obligations are in Macau patacas, in the event of unfavorable Macau pataca or Hong Kong dollar rate changes, Wynn Macau's obligations, as denominated in U.S. dollars, would increase. In addition, because we expect that most of the revenues for any casino that Wynn Macau operates in Macau will be in Hong Kong dollars, we are subject to foreign exchange risk with respect to the exchange rate between the Hong Kong dollar and the U.S. dollar. Also, because our Macau-related entities incur U.S. dollar-denominated debt, fluctuations in the exchange rates of the Macau pataca or the Hong Kong dollar, in relation to the U.S. dollar, could have adverse effects on Wynn Macau's results of operations, financial condition and ability to service its debt.

As of September 30, 2012, in addition to Hong Kong dollars, Wynn Macau also holds other foreign currencies, primarily CNH (offshore renminbi).

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Item 4. Controls and Procedures

(a) *Disclosure Controls and Procedures.* The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures were effective, at the reasonable assurance level, in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and were effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

(b) *Internal Control Over Financial Reporting.* There were no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter to which this report relates that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II – OTHER INFORMATION

Item 1. Legal Proceedings

We are occasionally party to lawsuits. As with all litigation, no assurance can be provided as to the outcome of such matters and we note that litigation inherently involves significant costs. For information regarding the Company's legal matters see Note 15 to our Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q.

Item 1A. Risk Factors

A description of our risk factors can be found in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2011. Except as noted below, there were no material changes to those risk factors during the nine months ended September 30, 2012.

Our information technology and other systems are subject to cyber security risk including misappropriation of customer information or other breaches of information security.

We rely on information technology and other systems to maintain and transmit customer financial information, credit card settlements, credit card funds transmissions, mailing lists and reservations information. In addition, our financial and recordkeeping processes are run from one central location at a secured off site Network Operations Center. We have substantially completed the implementation of industry best practice systems that are designed to meet all requirements of the Payment Card Industry standards for data protection, however, our information and processes are exposed to the ever-changing threat of compromised security, in the form of a risk of potential breach, system failure, computer virus, or unauthorized or fraudulent use by customers, company employees, or employees of third party vendors. The steps we take to deter and mitigate these risks may not be successful, and any resulting compromise or loss of data or systems could adversely impact operations or regulatory compliance and could result in remedial expenses, fines, litigation, and loss of reputation, potentially impacting our financial results.

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Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Dividend Restrictions

In November 2009, our Board of Directors approved the commencement of a regular quarterly cash dividend program. On October 24, 2012 the Company announced a cash dividend of \$8.00 per share, payable on November 20, 2012 to stockholders of record as of November 7, 2012. On July 17, 2012, the Company announced a dividend of \$0.50 per share, payable on August 14, 2012 to stockholders of record as of July 31, 2012. On May 7, 2012, the Company announced a dividend of \$0.50 per share, payable on June 4, 2012 to stockholders of record as of May 21, 2012. Wynn Resorts is a holding company and, as a result, our ability to pay dividends is dependent on our ability to obtain funds and our subsidiaries' ability to provide funds to us. Restrictions imposed by our subsidiaries' debt instruments significantly restrict certain key subsidiaries holding a majority of our assets, including Wynn Las Vegas, LLC and Wynn Macau, S.A., from making dividends or distributions to Wynn Resorts. Specifically, Wynn Las Vegas, LLC and certain of its subsidiaries are restricted under the indentures governing the first mortgage notes from making certain "restricted payments" as defined in the indentures. These restricted payments include the payment of dividends or distributions to any direct or indirect holders of equity interests of Wynn Las Vegas, LLC. Restricted payments cannot be made unless certain financial and non-financial criteria have been satisfied. While the Amended Wynn Macau Credit Facility contains similar restrictions, Wynn Macau is currently in compliance with all requirements, namely satisfaction of its leverage ratio, which must be met in order to pay dividends and is presently able to pay dividends in accordance with the Wynn Macau Credit Facilities.

Issuer Purchases of Equity Securities

In July 2012, the Company repurchased a total of 662 shares at an average price of \$96.44 per share in satisfaction of tax withholding obligations on vested restricted stock. In addition, as previously disclosed, based on the Board of Directors' finding of "unsuitability," on February 18, 2012, we redeemed and cancelled Aruze USA, Inc.'s 24,549,222 shares for a Redemption Note of \$1.94 billion. None of the foregoing shares were purchased as part of a publicly announced repurchase plan or program.

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Item 6. Exhibits

(a) Exhibits

EXHIBIT INDEX

Exhibit No.	Description
3.1	Second Amended and Restated Articles of Incorporation of the Registrant. (1)
3.2	Fourth Amended and Restated Bylaws of the Registrant, as amended. (2)
*10.1	Common Terms Agreement Fourth Amendment Agreement, dated as of July 31, 2012 between, among others, Wynn Resorts (Macau) S.A. as the company and Bank of China Limited Macau Branch as security agent.
*10.2	Revolving Credit Facility Agreement dated July 31, 2012 among Wynn Resorts (Macau), S.A., Bank of China, Limited Macau Branch, and certain financial institutions as Project Facility Lenders.
*10.3	Third Amendment Agreement to the Hotel Facility Agreement dated July 31, 2012 among Wynn Resorts (Macau), S.A., Bank of China, Limited Macau Branch, and certain financial institutions as Hotel Facility Lenders
*10.4	Sixth Amended and Restated Art Rental and Licensing Agreement, dated as of July 1, 2012 between Stephen A. Wynn, as lessor, Wynn Las Vegas, LLC, as lessee.
*31.1	Certification of Chief Executive Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).
*31.2	Certification of Chief Financial Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).
*32.1	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350.
101	The following financial information from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2012, filed with the SEC on November 9, 2012 formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Statements of Income for the three and nine months ended September 30, 2012 and 2011, (ii) the Condensed Consolidated Statements of Comprehensive Income for the three and nine months ended September 30, 2012 and 2011, (iii) the Condensed Consolidated Balance Sheets at September 30, 2012 and December 31 2011, (iv) the Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2012 and 2011, (v) the Condensed Consolidated Statement of Stockholders' Equity at September 30, 2012, and (vi) Notes to Condensed Consolidated Financial Statements.

* Filed herewith.

- (1) Previously filed with Amendment No. 4 to the Form S-1 filed by the Registrant on October 7, 2002 (File No. 333-90600) and incorporated herein by reference.
- (2) Previously filed with the Quarterly Report on Form 10-Q filed by the Registrant on August 9, 2007 and incorporated herein by reference.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: November 9, 2012

WYNN RESORTS, LIMITED

By: /s/ Matt Maddox

Matt Maddox
Chief Financial Officer and Treasurer
(Principal Financial Officer)

**C L I F F O R D
C H A N C E**

CLIFFORD CHANCE
高偉紳律師行

CONFORMED COPY

DATED 31 JULY 2012

WYNN RESORTS (MACAU) S.A.
the Company

CERTAIN FINANCIAL INSTITUTIONS
as Hotel Facility Lenders, Project Facility Lenders, Revolving Credit Facility Lenders and
Hedging Counterparties

THE FINANCIAL INSTITUTIONS NAMED HEREIN
as Outgoing Global Coordinating Lead Arrangers, Outgoing Project Facility Agent, Outgoing
Hotel Facility Agent, Outgoing Revolving Credit Facility Agent, Outgoing Intercreditor
Agent and Outgoing Security Agent

THE FINANCIAL INSTITUTIONS NAMED HEREIN
as Incoming Global Coordinating Lead Arrangers

BANK OF CHINA LIMITED, MACAU BRANCH
as Incoming Term Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Incoming Revolving Credit Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Incoming Intercreditor Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Incoming Security Agent and Incoming POA Agent

BANCO NACIONAL ULTRAMARINO, S.A.
as Second Ranking Finance Party and Outgoing POA Agent

COMMON TERMS AGREEMENT
FOURTH AMENDMENT AGREEMENT

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THIS AGREEMENT is dated 31 July 2012 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the "Company");
- (2) **THE FINANCIAL INSTITUTION** named on the signing pages as the Hotel Facility Lender;
- (3) **THE FINANCIAL INSTITUTION** named on the signing pages as the Project Facility Lender;
- (4) **THE FINANCIAL INSTITUTION** named on the signing pages as the Revolving Credit Facility Lender;
- (5) **THE FINANCIAL INSTITUTIONS** named on the signing pages as the Hedging Counterparties;
- (6) **BANC OF AMERICA SECURITIES ASIA LIMITED, DEUTSCHE BANK AG, HONG KONG BRANCH and SG AMERICAS SECURITIES, LLC** in their capacities as the outgoing Global Coordinating Lead Arrangers (the "Outgoing Global Coordinating Lead Arrangers");
- (7) **BANCO NACIONAL ULTRAMARINO, S.A., BANK OF AMERICA, N.A., BANK OF CHINA LIMITED, MACAU BRANCH, DBS BANK LTD., DEUTSCHE BANK AG, SINGAPORE BRANCH, INDUSTRIAL AND COMMERCIAL BANK OF CHINA (MACAU) LIMITED, JPMORGAN CHASE BANK, N.A., HONG KONG BRANCH, STANDARD CHARTERED BANK (HONG KONG) LIMITED, THE BANK OF NOVA SCOTIA, THE ROYAL BANK OF SCOTLAND PLC, SINGAPORE BRANCH, UBS AG HONG KONG BRANCH and UNITED OVERSEAS BANK LIMITED** in their capacities as the incoming Global Coordinating Lead Arrangers (the "Incoming Global Coordinating Lead Arrangers");
- (8) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as the outgoing Hotel Facility Agent (the "Outgoing Hotel Facility Agent");
- (9) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as the outgoing Project Facility Agent (the "Outgoing Project Facility Agent");
- (10) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as the outgoing Revolving Credit Facility Agent (the "Outgoing Revolving Credit Facility Agent");
- (11) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as the outgoing Intercreditor Agent (the "Outgoing Intercreditor Agent");
- (12) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as the outgoing Security Agent (the "Outgoing Security Agent");
- (13) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the incoming Term Facility Agent (the "Incoming Term Facility Agent");
- (14) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the incoming Revolving Credit Facility Agent (the "Incoming Revolving Credit Facility Agent");

- (15) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the incoming Intercreditor Agent (the "Incoming Intercreditor Agent");
- (16) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the incoming Security Agent (the "Incoming Security Agent");
- (17) **BANCO NACIONAL ULTRAMARINO, S.A.** as Second Ranking Finance Party and outgoing POA Agent (the "Outgoing POA Agent"); and
- (18) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the incoming POA Agent (the "Incoming POA Agent").

RECITALS:

- (A) The parties hereto have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents.
- (B) It has been agreed to further amend the Common Terms Agreement as set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and incorporation of defined terms

- (a) In this Agreement:

"**Amended Common Terms Agreement**" means the Original Common Terms Agreement, as amended by this Agreement, the terms of which are set out in Schedule 2 (*Amended Common Terms Agreement*);

"**Assignment of Reinsurances Confirmation**" means a confirmation in relation to an Assignment of Reinsurances in form and substance satisfactory to the Incoming Security Agent and made between the relevant Direct Insurer and the Incoming Security Agent;

"**Completion Memorandum**" means the completion memorandum relating to the matters contemplated in this Agreement, in the Agreed Form;

"**Completion Request**" means a request in the Agreed Form for:

- (i) an Advance denominated in USD (in an amount at least equal to all outstanding amounts denominated in USD under the Project Facility as at the Fourth Amendment Effective Date);
- (ii) an Advance denominated in HKD (in an amount at least equal to all outstanding amounts denominated in HKD under the Project Facility as at the Fourth Amendment Effective Date); and
- (iii) other Advances denominated in HKD and USD,

under the Term Facility to be made on the Fourth Amendment Effective Date, in order that the Term Facility is fully drawn as at the Fourth Amendment Effective Date;

"Deed of Appointment and Priority Third Deed of Amendment" means the Deed of Appointment and Priority Third Deed of Amendment dated on or about the date hereof between, among others, the Original First Ranking Lenders, the Hedging Counterparties, the Second Ranking Finance Party, the Company, the Outgoing Security Agent, the Incoming Security Agent, the Outgoing Intercreditor Agent, the Incoming Intercreditor Agent and the Outgoing POA Agent;

"English Security Confirmation" means the document so entitled dated on or about the Fourth Amendment Effective Date between the Company and the Security Agent;

"First Macau Security Confirmation" means the document so entitled dated on or about the Fourth Amendment Effective Date between the Company and the Security Agent;

"Fourth Amendment Effective Date" has the meaning given to such term in Clause 4 (*Amendment*);

"Guarantee Third Deed of Amendment and Acknowledgement" means the Guarantee Third Deed of Amendment and Acknowledgement dated on or about the date hereof between Wynn Asia 2, Wynn International, Wynn Holdings, Wynn HK, Palo, the Outgoing Security Agent and the Incoming Security Agent;

"Hong Kong Security Confirmation" means the document so entitled dated on or about the Fourth Amendment Effective Date between the Company, Wynn Holdings and the Security Agent;

"Hotel Facility Agent" has the meaning given to such term in the Original Common Terms Agreement;

"Hotel Facility Lender" has the meaning given to such term in the Original Common Terms Agreement;

"Irish and New York Security Documents" means:

- (i) the Security Assignment and Charge on Account (governed by the laws of the Republic of Ireland) dated 22 September 2008 and made between Wynn Resorts (Macau) S.A. as Chargor and Société Générale, Hong Kong Branch as Security Agent;
- (ii) the Account Control Agreement (governed by the laws of the State of New York) dated 3 October 2008 made between Wynn Resorts (Macau) S.A. as Pledgor, Deutsche Bank Trust Company Americas as Depository Bank and Société Générale, Hong Kong Branch as Security Agent; and
- (iii) the Account Security Agreement (governed by the laws of the State of New York) dated 3 October 2008 made between Wynn Resorts (Macau) S.A. as the Company and Société Générale, Hong Kong Branch as Security Agent;

"Livrança Updated Covering Letter" means the letter from the Company to the Security Agent dated on or about the Fourth Amendment Effective Date in relation to the Livranças and the Livrança Covering Letter, duly acknowledged by Palo;

"Macau Security Confirmations" means the First Macau Security Confirmation, the Second Macau Security Confirmation and the Wong Security Confirmation;

"Nevada Security Confirmation" means the document so entitled dated on or about the Fourth Amendment Effective Date between the Company and the Security Agent;

"Original Common Terms Agreement" means the Common Terms Agreement as amended from time to time prior to the date of this Agreement;

"Palo" means Palo Real Estate Company Limited a company with limited liability incorporated in the Macau SAR with registration number 27319 SO;

"Palo Share Pledge" means the Share Pledge to be entered into between the Company, Wynn International, Wynn HK, Palo and the Security Agent;

"POA Agent" has the meaning given to such term in the Deed of Appointment and Priority;

"Post-Amendment Global Transfer Agreement" means the agreement so entitled dated on or about the date of this Agreement between, among others, the Company and the Incoming Intercreditor Agent;

"Pre-Amendment Global Transfer Agreement" means the agreement so entitled dated on or about the date of this Agreement between, among others, the Company and the Outgoing Intercreditor Agent;

"Project Facility" has the meaning given to such term in the Original Common Terms Agreement;

"Project Facility Agent" has the meaning given to such term in the Original Common Terms Agreement;

"Project Facility Agreement" has the meaning given to such term in the Original Common Terms Agreement;

"Project Facility Lender" has the meaning given to such term in the Original Common Terms Agreement;

"Required Filings" means any filing, notification, recording, stamping and registration required in respect of any of the Senior Finance Documents

referred to in paragraph 2 of Schedule 1 (*Conditions Pr ced nt*) to this Agreement at Companies House in England and Wales, the Companies Registry in Hong Kong, the Companies Registration Office in Ireland, the Financial Supervision Commission in the Isle of Man, the Gaming Inspection and Coordination Bureau in Macau and in the register of charges of Wynn Asia 2;

"Revolving Credit Facility Agreement" means the agreement so entitled dated on or about the date of this Agreement between the Company, the Incoming Revolving Credit Facility Agent and the Revolving Credit Facility Lenders;

"Second Macau Security Confirmation" means the document so entitled dated on or about the Fourth Amendment Effective Date between the Company, Wynn HK, Wynn International and the Security Agent;

"Security Confirmation Documents" means:

- (i) each Macau Security Confirmation;
- (ii) the Hong Kong Security Confirmation;
- (iii) the English Security Confirmation; and
- (iv) the Nevada Security Confirmation;

"Subordination Deed Third Deed of Amendment and Acknowledgement of Security" means the Subordination Deed Third Deed of Amendment and Acknowledgement of Security dated on or about the date hereof between, among others, the Company, Wynn Resorts, Wynn Resorts Holdings, LLC, Wynn Asia 2, Wynn International, Wynn Holdings, Wynn HK, Worldwide Wynn, LLC, Wynn Design & Development, LLC, Wynn International Marketing, Ltd., Palo, the Outgoing Security Agent and the Incoming Security Agent;

"Term Facility Agreement Third Amendment Agreement" means the agreement so entitled dated on or about the date of this Agreement between the Company, the Incoming Term Facility Agent and the Term Facility Lenders; and

"Wong Security Confirmation" means the document so entitled dated on or about the Fourth Amendment Effective Date between the Mr. Wong Chi Seng and the Security Agent.

- (b) Unless a contrary indication appears, a term defined in or by reference in Schedule 2 (*Amended Common Terms Agreement*) or, if not defined in or by reference in such Schedule, the Deed of Appointment and Priority, has the same meaning in this Agreement.
- (c) The principles of construction and rules of interpretation set out in Schedule 2 (*Amended Common Terms Agreement*) shall have effect as if set out in this Agreement.

Clauses

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Agreement.

Designation

In accordance with the Common Terms Agreement, each of the Company and the Outgoing Intercreditor Agent designates:

- (a) the Term Facility Agreement Third Amendment Agreement as a Senior Finance Document;
- (b) the Revolving Credit Facility Agreement as a Senior Finance Document;
- (c) this Agreement as a Senior Finance Document;
- (d) the Subordination Deed Third Deed of Amendment and Acknowledgement of Security as a Security Document;
- (e) the Guarantee Third Deed of Amendment and Acknowledgement as a Security Document;
- (f) Deed of Appointment and Priority Third Deed of Amendment as a Security Document;
- (g) the Power of Attorney as a Security Document;
- (h) with effect from the date thereof, the Palo Share Pledge as a Security Document;
- (i) with effect from the date thereof, the Palo Assignment of Insurances as a Security Document;
- (j) with effect from the date thereof, the Palo Floating Charge as a Security Document;
- (k) the Palo Pledge over Onshore Accounts as a Security Document;
- (l) with effect from the date thereof, the Cotai Mortgage as a Security Document;
- (m) with effect from the date thereof, the Cotai Power of Attorney as a Security Document;
- (n) each of the Security Confirmation Documents as a Security Document;
- (o) the Livrança Updated Covering Letter as a Security Document; and
- (p) with effect from the date thereof, each Assignment of Reinsurances Confirmation as a Security Document.

2. **CHANGE OF AGENTS**

2.1 **Resignation and Appointment**

Société Générale, Hong Kong Branch hereby resigns as Hotel Facility Agent, Project Facility Agent, Revolving Credit Facility Agent and Intercreditor Agent and:

- (a) the Incoming Term Facility Agent is hereby appointed as Term Facility Agent (it being agreed by all parties that the renaming of the Hotel Facility Agent referred to in paragraph (d) of Clause 8.3 (*Naming*) shall occur immediately prior to such appointment);
- (b) the Incoming Revolving Credit Facility Agent is hereby appointed as Revolving Credit Facility Agent; and
- (c) the Incoming Intercreditor Agent is hereby appointed as Intercreditor Agent,

in each case, as successor to Société Générale, Hong Kong Branch and with effect on and from the Fourth Amendment Effective Date (but subject to Clause 6 (*Order of Events on the Fourth Amendment Effective Date*)).

2.2 **Notice Period**

The parties hereto agree that the resignations and appointments referred to in Clause 2.1 (*Resignation and Appointment*) shall be effective notwithstanding the notice period specified in sub-clause 23.12.1 of clause 23.12 (*Resignation*) of the Original Common Terms Agreement or any other provision of the Senior Finance Documents. The Company and each Lender hereby approves each of the appointments referred to in Clause 2.1 (*Resignation and Appointment*).

2.3 **Accession**

Each of the Incoming Term Facility Agent, the Incoming Revolving Credit Facility Agent and the Incoming Intercreditor Agent hereby agrees with each other person who is or who becomes a party to the Senior Finance Documents that with effect on and from the Fourth Amendment Effective Date such Incoming Term Facility Agent, Incoming Revolving Credit Facility Agent and Incoming Intercreditor Agent shall be bound by the Senior Finance Documents and be entitled to exercise rights and be subject to obligations thereunder as Term Facility Agent, Revolving Credit Facility Agent and the Intercreditor Agent respectively. The parties hereto agree that, for the purposes of sub-clause 23.12.6 of clause 23.12 (*Resignation*) of the Original Common Terms Agreement, this Agreement shall constitute an Agent's Deed of Accession duly completed, executed and delivered (notwithstanding that it is executed under hand, and not by way of deed) by each of the Incoming Term Facility Agent, the Incoming Revolving Credit Facility Agent and the Incoming Intercreditor Agent.

2.4 **Notices**

Each of the Incoming Term Facility Agent, the Incoming Revolving Credit Facility Agent and the Incoming Intercreditor Agent hereby confirms that its Facility Office, telephone number, fax number, address and person designated by it for the purposes of Clause 29 (*Notices*) of the Amended Common Terms Agreement are as set out next to its name on the signature pages hereto.

2.5 **Without prejudice**

The provisions of this Clause 2 (*Change of Agents*) is without prejudice to the provisions of clause 23.12 (*Resignation*) of the Original Common Terms Agreement which shall apply, subject to the variations referred to in this Clause 2 (*Change of Agents*).

3. **GLOBAL COORDINATING LEAD ARRANGERS**

With effect on and from the Fourth Amendment Effective Date (subject to Clause 6 (*Order of Events on the Fourth Amendment Effective Date*)), each Outgoing Global Coordinating Lead Arranger, in its capacity as a Global Coordinating Lead Arranger, shall be discharged from any further obligations towards the other Parties under the Original Common Terms Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to the Fourth Amendment Effective Date) and, as from that date, each Incoming Global Coordinating Lead Arranger shall assume the same obligations, and become entitled to the same rights, as if it had been an original Global Coordinating Lead Arranger and party to the Original Common Terms Agreement.

4. **AMENDMENT**

With effect from the date upon which the Incoming Intercreditor Agent confirms to the Lenders and the Company that it has received (or the Incoming Intercreditor Agent has waived receipt of, as the case may be) each of the documents or evidence listed in Schedule 1 (*Conditions Precedent*) in a form and substance satisfactory to the Incoming Intercreditor Agent, (such date being the "Fourth Amendment Effective Date"), the Original Common Terms Agreement shall be amended so that it shall be read and construed for all purposes as set out in Schedule 2 (*Amended Common Terms Agreement*).

5. **TERM FACILITY ADVANCE**

5.1 **Completion Request**

Subject to the occurrence of the Fourth Amendment Effective Date and receipt by the Incoming Intercreditor Agent and the Incoming Term Facility Agent of the Completion Request, the requirements specified in Clause 3.1 (*Drawdown conditions*) of the Amended Common Terms Agreement (and clause 11.1 (*Advances*) of the Term Facility Agreement) shall, with effect from the Fourth Amendment Effective Date, be deemed to have been satisfied in respect of the Advances requested in the Completion Request as if such request comprised an Advance Request and had been delivered (and notified) in accordance with the provisions thereof and each of the other provisions of Clause 3 (*Drawdown of Advances*) of the Amended Common Terms Agreement and the other Senior Finance Documents shall apply accordingly. Each Advance under the Term Facility which is outstanding on the Fourth Amendment Effective Date shall have an initial Interest Period set out opposite that Advance in the Completion Memorandum.

5.2 **Repayment of Project Facility**

The Incoming Term Facility Agent is hereby directed by the Company (with the agreement and acknowledgement of the parties hereto) to pay:

- (a) an amount of each Advance requested in the Completion Request equal to all amounts then outstanding and denominated in USD and HKD; as the case may be, under the Project Facility directly to the Project Facility Lender, to be applied in repayment in full of the Project Facility, whereupon the Project Facility shall be permanently cancelled and the Available Facility (as defined in the Project Facility Agreement) in respect thereof shall be zero; and
- (b) such amount of each such Advance remaining after the application referred to in paragraph (a) above, as the Company directs in the Completion Request.

5.3 **[Not used]**

5.4 **Project Facility Lender**

Upon the repayment in full of the Project Facility in accordance with paragraph (a) of Clause 5.2 (*Repayment of Project Facility*), the Project Facility Lender shall cease to be a Lender for the purpose of the Amended Common Terms Agreement and shall be released from the indemnity set out in clause 15.3 (*Indemnity to the Project Facility Agent*) of the Project Facility Agreement (as defined in the Original Common Terms Agreement) (other than to the extent of any claims arising thereunder prior to the Fourth Amendment Effective Date).

5.5 **Waiver of notice and pro-rata payments requirements**

The parties hereto waive (a) the notice requirement specified in sub-clause 8.2.1 of clause 8.2 (*Voluntary Prepayment of the Term Loan Facilities*) of the Original Common Terms Agreement and (b) the requirement in sub-clause 8.2.2 of clause 8.2 (*Voluntary Prepayment of the Term Loan Facilities*) of the Original Common Terms Agreement for payments or prepayments to be made *pro rata* as between the Term Facility and the Project Facility, in each case, in respect of the repayment in full of the Project Facility referred to in Clause 5.2 (*Repayment of Project Facility*).

5.6 **Breakfunding and accrued interest**

- (a) The Company shall pay to Bank of China Limited, Macau Branch (for its own account) the amounts (at the times) contemplated by a letter dated on or prior to the date hereof and made between Company and Bank of China Limited, Macau Branch in connection with the roles of Bank of China Limited, Macau Branch under the Pre-Amendment Global Transfer Agreement and the Post-Amendment Global Transfer Agreement (the "**Letter**").
- (b) Notwithstanding clause 26.1 (*Payments under the Senior Finance Documents*) of the Original Common Terms Agreement, payments of accrued interest as contemplated by the Letter shall be made to Bank of China Limited, Macau Branch by the time contemplated in the Completion Memorandum (in the applicable currency or currencies) and not to the Outgoing Hotel Facility Agent for the account of the Term Facility Lender or the Outgoing Project Facility Agent for the account of the Project Facility Lender, as the case may be.

6. **ORDER OF EVENTS ON THE FOURTH AMENDMENT EFFECTIVE DATE**

The parties hereto agree in respect of the actions, events and other steps that are set out in the Pre-Amendment Global Transfer Agreement, Clauses 2 (*Change of Agents*), 3 (*Global Coordinating Lead Arrangers*), 4 (*Amendment*) and 5 (*Term Facility Advance*) and in the Post-Amendment Global Transfer Agreement which are stated to occur on the Fourth Amendment Effective Date, that such actions, events and other steps shall (where those actions, events and other steps have been carried out in accordance with the Completion Memorandum) occur on the Fourth Amendment Effective Date in the order set out in the Completion Memorandum.

7. **REPRESENTATIONS**

7.1 **Prior to the Fourth Amendment Effective Date**

The representations and warranties set out in schedule 4 of the amended Common Terms Agreement set out as Schedule 2 (*Amended Common Terms Agreement*) to this Agreement are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the date of this Agreement.

7.2 **On the Fourth Amendment Effective Date**

The representations and warranties set out in schedule 4 of the amended Common Terms Agreement set out as Schedule 2 (*Amended Common Terms Agreement*) to this Agreement are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the Fourth Amendment Effective Date, as if any reference therein to any Senior Finance Document in respect of which any amendment, acknowledgement, confirmation, consolidation, novation, restatement, replacement or supplement is expressed to be made by any of the documents referred to in Clause 1.3 (*Designation*) included, to the extent relevant, such document and the Senior Finance Document as so amended, acknowledged, confirmed, consolidated, novated, restated, replaced or supplemented.

7.3 **Palo Real Estate Company Limited**

For the purposes of any applicable provision of the Senior Finance Documents (including, without limitation, this Clause 7 (*Representations*)), the Company (for the benefit of itself and each other Obligor) has disclosed to the Lenders that, as at the date hereof, Wynn International and Wynn HK each legally and beneficially own 0.1% of the total issued share capital of Palo.

8. **SECURITY**

8.1 **Execution by Security Agent**

The Incoming Security Agent shall execute and deliver each of the Subordination Deed Third Deed of Amendment and Acknowledgement of Security, the Guarantee Third Deed of Amendment and Acknowledgement, the Deed of Appointment and Priority Third Deed of Amendment, each of the Security Confirmation Documents

and each of the Assignment of Reinsurances, Confirmations and is authorised and instructed by the Incoming Intercreditor Agent (acting on the instructions of the Term Facility Lender and the Project Facility Lender) to do so accordingly.

8.2

Release of Security

Each of the Outgoing Intercreditor Agent (acting on the instructions of each of the Term Facility Lender and the Project Facility Lender) and the Second Ranking Finance Party hereby instructs the Outgoing Security Agent to release the Security created or purported to be created under each Irish and New York Security Document, such release to be effective on and from the Fourth Amendment Effective Date (immediately prior to the effectiveness of the Outgoing Security Agent's resignation as Security Agent pursuant to the resignation letter referred to in paragraph 5(a) of Schedule 1 (*Conditions Precedent*)).

8.3

Naming

The parties agree that with effect on and from Bank of China Limited, Macau Branch becoming the sole Hotel Facility Lender and the sole Project Facility Lender:

- (a) the Sponsors' Subordination Deed (as defined in the Original Common Terms Agreement) (as amended, consolidated, supplemented, novated or replaced from time to time, including pursuant to the Subordination Deed Third Deed of Amendment and Acknowledgement of Security) shall be renamed the "Subordination Deed";
- (b) the Wynn Pledgors' Guarantee (as defined in the Original Common Terms Agreement) (as amended, consolidated, supplemented, novated or replaced from time to time, including pursuant to the Guarantee Third Deed of Amendment and Acknowledgement) shall be renamed the "Guarantee";
- (c) the Hotel Facility Agreement (as defined in the Original Common Terms Agreement) (as amended, consolidated, supplemented, novated or replaced from time to time, including pursuant to the Term Facility Agreement Third Amendment Agreement) shall be renamed the "Term Facility Agreement" and
- (d) the Hotel Facility Agent (as defined in the Original Common Terms Agreement) shall be renamed the Term Facility Agent and the Hotel Facility Lenders (as defined in the Original Common Terms Agreement) shall be renamed the Term Facility Lenders.

9.

CONTINUITY AND FURTHER ASSURANCE

9.1

Continuing obligations

The provisions of the Common Terms Agreement shall, save as amended by this Agreement, continue in full force and effect. In particular, nothing in this Agreement shall affect the rights of the Senior Secured Creditors in respect of the occurrence of any Default which is continuing or which arises on or after the date of this Agreement.

9.2 **Further assurance**

The Company shall, upon the written request of the Incoming Intercreditor Agent and the Company's expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

10. **MISCELLANEOUS**

10.1 **Incorporation of terms**

The provisions of Clauses 1.5.1(e), 1.5.2 and 1.5.3 (*Third Party Rights*), Clause 16.2 (*Transaction Expenses*), Clause 16.4 (*Enforcement costs*), Clause 28 (*Non-recourse Liability*), Clause 29.1 (*Communications in Writing*) to 29.5 (*Electronic communication*), Clause 31 (*Partial Invalidity*), Clause 32 (*Remedies and Waivers*) and Clause 38 (*Jurisdiction*) of Schedule 2 shall be incorporated into this Agreement as if set out in full herein and as if references in those clauses to "Agreement" are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

10.2 **Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

10.3 **Conditions Subsequent**

The Company shall procure that:

- (a) as soon as reasonably practicable and in any case within 45 days of the Fourth Amendment Effective Date, each Direct Insurer that has entered into an Assignment of Reinsurances enters into an Assignment of Reinsurances Confirmation in respect of each such Assignment of Reinsurances; and
- (b) as soon as reasonably practicable and in any case within 21 days of the Fourth Amendment Effective Date, each share certificate relating to the shares in the Company pledged pursuant to the Company Share Pledge are endorsed by Wynn HK and Wynn International, as appropriate, in favour of the Incoming Security Agent and that such endorsement is reflected in the Company's share register book,

and that evidence of the same is (within the time period specified, in each case, above) provided to the Incoming Intercreditor Agent.

11. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
CONDITIONS PRECEDENT

1. Due establishment, authority and certification

In relation to each Obligor and each Wynn Non-Obligor Subordination Deed Party, receipt by the Incoming Intercreditor Agent of a certificate signed by a duly authorised signatory of that Person and which:

- (a) either (A) attaches a copy of that Person's Governing Documents or (B) certifies that the copy of that Person's Governing Documents (which was previously delivered to the Outgoing Intercreditor Agent on or about 14 September 2004 or subsequently) remains correct, complete and in full force and effect as at a date no earlier than the Fourth Amendment Effective Date;
- (b) attaches a copy of a board resolution or such other equivalent corporate authorisation approving the execution, delivery and performance of the Senior Finance Documents referred to in paragraph 2 below to which it is a party, the terms and conditions thereof and the transactions contemplated thereby, authorising a named person or persons to sign such Senior Finance Documents and any document to be delivered by that Person pursuant to such Senior Finance Documents and authorising the signatory of the relevant certificate to sign certificates in connection therewith;
- (c) (in the case of the Company only) certifies that each document listed in this Schedule 1 and delivered by an Obligor is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the Fourth Amendment Effective Date;
- (d) confirms that:
 - (i) (in the case of each Obligor only) borrowing, guaranteeing or securing as appropriate, the total commitments of all Lenders in respect of the Term Facility and the Revolving Credit Facility would not cause any borrowing, guarantee, security or similar limit binding on any such Person to be exceeded; and
 - (ii) (in the case of each Wynn Non-Obligor Subordination Deed Party other than the Licensor and the Corporate Services Provider) Liens granted by such person pursuant to the Security Documents to which it is a party would not cause any limit on the granting of security or similar restriction binding on it to be exceeded;
- (e) (in the case of each Obligor only) certifies that no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur; and
- (f) (in the case of the Company only) certifies that no Default is continuing or would occur as a result of Palo becoming an Obligor.

2. **Senior Finance Documents**

- (a) Receipt by the Incoming Intercreditor Agent of an original of each of the following Senior Finance Documents, in each case duly executed by the parties thereto:
- (i) the Term Facility Agreement Third Amendment Agreement;
 - (ii) the Revolving Credit Facility Agreement;
 - (iii) this Agreement;
 - (iv) the Subordination Deed Third Deed of Amendment and Acknowledgement of Security;
 - (v) the Guarantee Third Deed of Amendment and Acknowledgement;
 - (vi) Deed of Appointment and Priority Third Deed of Amendment;
 - (vii) each of the Security Confirmation Documents;
 - (viii) a Fee Letter between the Incoming Term Facility Agent, the Incoming Revolving Credit Facility Agent, the Incoming Intercreditor Agent and the Incoming Security Agent and the Company;
 - (ix) a Fee Letter between the Incoming Intercreditor Agent and the Company relating to the payment by the Company of an up-front fee to each person that, immediately following the consummation of the transactions set out in the Post-Amendment Global Transfer Agreement, shall be a Lender;
 - (x) the Livranças, the Livrança Covering Letter (in each case duly endorsed by Palo) and the Livrança Updated Covering Letter (signed by the Company and endorsed and countersigned, as required, by Palo);
 - (xi) a Finance Party Accession Undertaking executed by each of the Incoming Term Facility Agent, the Incoming Revolving Credit Facility Agent and the Incoming Intercreditor Agent;
 - (xii) the Palo Pledge over Onshore Accounts; and
 - (xiii) any other document entered into which the Incoming Intercreditor Agent and the Company agree prior to the Fourth Amendment Signing Date to designate as a Senior Finance Document.
- (b) Each Senior Finance Document referred to in this paragraph 2 has been duly authorised, executed and delivered by such of the Obligors party thereto and (save in respect of any registration required in respect of the Subordination Deed Third Deed of Amendment and Acknowledgement of Security, the Palo Pledge over Onshore Accounts and each of the Security Confirmation Documents at the Companies House in England and Wales, the Hong Kong Companies Registry, the Conservatória dos Registos Comercial e de Bens

Móveis in Macau SAR, the Conservatória do Registo Predial in Macau SAR, the applicable Uniform Commercial Code filing office for local/county, state and federal Uniform Commercial Code filings and the Isle of Man Companies Registry, as applicable, based on the Senior Finance Document subject to the filing) duly filed, notified, recorded, stamped and registered as necessary.

- (c) All conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the Fourth Amendment Effective Date) have been satisfied or waived in accordance with their respective terms and each such Senior Finance Document (save as provided in paragraph (b)) is in full force and effect accordingly.

3. **Legal opinions**

Receipt by the Incoming Intercreditor Agent of legal opinions (substantially in the form distributed to the Incoming Intercreditor Agent prior to the Fourth Amendment Signing Date) from:

- (a) Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors;
- (b) Lionel Sawyer & Collins, Nevada legal adviser to the Senior Secured Creditors;
- (c) M&P Legal, Isle of Man legal adviser to the Senior Secured Creditors;
- (d) Walkers, Cayman legal adviser to the Senior Secured Creditors;
- (e) Clifford Chance, Hong Kong SAR legal advisers to the Senior Secured Creditors; and
- (f) Clifford Chance, English legal advisers to the Senior Secured Creditors.

4. **Fees and expenses**

Receipt by the Incoming Intercreditor Agent of evidence that:

- (a) all taxes, fees and other costs payable in connection with the execution, delivery, filing, recording, stamping and registering of the documents referred to in this Schedule 1; and
- (b) all fees, costs and expenses due to the Senior Secured Creditors and their advisers under the Senior Finance Documents on or before the Fourth Amendment Effective Date,

have been paid or shall be paid (to the extent that such amounts have been duly invoiced) by no later than the Fourth Amendment Effective Date.

5. **Outgoing Security Agent and Incoming Security Agent**

Evidence that the Outgoing Security Agent has resigned and the Incoming Security Agent has been appointed as its successor as Security Agent, each in accordance with clause 17.1 (*Resignation of the Security Agent*) of the Deed of Appointment and Priority, such evidence to comprise (without limitation):

- (a) a resignation letter from the Outgoing Security Agent addressed to the Secured Parties (with a copy to the Company);

- (b) evidence that the Incoming Security Agent has become a party to the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (in place of the Outgoing Security Agent);
- (c) each assignment and transfer agreement (and each similar document as may be required) executed between the Outgoing Security Agent and the Incoming Security Agent whereby the Outgoing Security Agent assigns and transfers all of its rights, benefits and obligations (if any) under the Finance Documents to the Incoming Security Agent;
- (d) evidence that the Outgoing Security Agent has given prior notice of such assignment and transfer to the Government of the Macau SAR; and
- (e) evidence that all filings, registrations and notifications necessary to preserve the priority of the Security in connection with the resignation of the Outgoing Security Agent and the appointment of the Incoming Security Agent have been made.

6. **Security**

Receipt by the Incoming Intercreditor Agent of evidence that each Security Document has been duly filed, notified, recorded, stamped and (save as provided in paragraph 2(b) above) registered as necessary and all other actions necessary in the reasonable opinion of the Incoming Intercreditor Agent or the Incoming Security Agent to perfect the Security have been carried out.

7. **Process agents**

Where such appointment is required under any Senior Finance Document referred to in paragraph 2 above that Palo is a party to, a copy of process agent acceptance of its appointment by Palo for the acceptance of legal proceedings.

8. **Other documents and evidence**

- (a) Evidence that all those things specified as being required to be done on or prior to the Fourth Amendment Effective Date in the Completion Memorandum have been done in accordance with the Completion Memorandum.
- (b) Receipt by the Incoming Intercreditor Agent and the Incoming Term Facility Agent of the Completion Request.
- (c) Receipt by the Incoming Intercreditor Agent of a copy of:
 - (i) the Pre-Amendment Global Transfer Agreement; and
 - (ii) the Post-Amendment Global Transfer Agreement.

in each case, duly executed by the parties thereto.

- (d) Receipt by the Incoming Intercreditor Agent of evidence that:
 - (i) the transfers and acquisitions referred to in the Pre-Amendment Global Transfer Agreement have been completed; and
 - (ii) the transfers and acquisitions referred to in the Post-Amendment Global Transfer Agreement will be completed on the Fourth Amendment Effective Date.
- (e) A copy of any other authorisation or other document, opinion or assurance which the Incoming Intercreditor Agent considers to be necessary or desirable (if it has notified the Company accordingly prior to the Fourth Amendment Effective Date) in connection with the entry into and performance of the transactions contemplated by any Senior Finance Document or for the validity and enforceability of any Senior Finance Document.
- (f) A valuation report by Knight Frank Macau Limited relating to the Site Facilities and the Cotai Site Facilities and addressed to, and/or capable of being relied upon by, the Incoming Intercreditor Agent as Intercreditor Agent (for itself and for and on behalf of the other Senior Secured Creditors).
- (g) A copy, certified by an authorised signatory of the Company to be a true copy, of the Cotai Land Concession Contract.
- (h) Receipt by the Incoming Intercreditor Agent of evidence that the Macau SAR government has: (a) accepted and agreed unconditionally to the submission made by the Company to the Macau SAR government on 26 July 2012, (b) consented to the increase in the Company's financial indebtedness (contemplated by the Senior Finance Documents (including, without limitation, as the same may be entered into, amended, consolidated, supplemented, novated or replaced on or about the Fourth Amendment Effective Date) and (c) confirmed that the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (as amended, consolidated, supplemented, novated or replaced from time to time prior to the Fourth Amendment Effective Date) continue to apply with respect to such financial indebtedness.

SCHEDULE 2
AMENDED COMMON TERMS AGREEMENT

DATED 14 SEPTEMBER 2004

WYNN RESORTS (MACAU) S.A.
the Company

CERTAIN FINANCIAL INSTITUTIONS
as Term Facility Lenders, Revolving Credit Facility Lenders
and Hedging Counterparties

**BANK OF AMERICA, N.A., BANK OF CHINA LIMITED, MACAU BRANCH,
BANCO NACIONAL ULTRAMARINO, S.A., DBS BANK LTD., DEUTSCHE BANK
AG, SINGAPORE BRANCH, INDUSTRIAL AND COMMERCIAL BANK OF
CHINA (MACAU) LIMITED, JPMORGAN CHASE BANK, N.A., HONG KONG
BRANCH, STANDARD CHARTERED BANK (HONG KONG) LIMITED, THE
BANK OF NOVA SCOTIA, THE ROYAL BANK OF SCOTLAND PLC, SINGAPORE
BRANCH, UBS AG HONG KONG BRANCH and UNITED OVERSEAS BANK**

LIMITED
as Global Coordinating Lead Arrangers

BANK OF CHINA LIMITED, MACAU BRANCH
as Term Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Revolving Credit Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Intercreditor Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Security Agent

COMMON TERMS AGREEMENT
(As amended by the Common Terms Agreement Amendment Agreement
dated 14 September 2005,
the Common Terms Agreement Second Amendment Agreement
dated 27 June 2007
the Common Terms Agreement Third Amendment Agreement
dated 8 September 2009
and the Common Terms Agreement Fourth Amendment Agreement
dated 31 July 2012)

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THIS AGREEMENT is made on the 14th day of September 2004

BETWEEN:

- (1) **WYNN RESORTS (MACAU) S.A. (the "Company");**
- (2) **THE FINANCIAL INSTITUTIONS defined below as Term Facility Lenders;**
- (3) **THE FINANCIAL INSTITUTIONS defined below as Revolving Credit Facility Lenders;**
- (4) **THE FINANCIAL INSTITUTIONS defined below as Hedging Counterparties;**
- (5) **BANK OF AMERICA, N.A., BANK OF CHINA LIMITED, MACAU BRANCH, BANCO NACIONAL ULTRAMARINO, S.A., DBS BANK LTD., DEUTSCHE BANK AG, SINGAPORE BRANCH, INDUSTRIAL AND COMMERCIAL BANK OF CHINA (MACAU) LIMITED, JPMORGAN CHASE BANK, N.A., HONG KONG BRANCH, STANDARD CHARTERED BANK (HONG KONG) LIMITED, THE BANK OF NOVA SCOTIA, THE ROYAL BANK OF SCOTLAND PLC, SINGAPORE BRANCH, UBS AG HONG KONG BRANCH and UNITED OVERSEAS BANK LIMITED in their capacities as global coordinating lead arrangers of the Facilities (the "Global Coordinating Lead Arrangers" or "GCLAs");**
- (6) **BANK OF CHINA LIMITED, MACAU BRANCH in its capacity as Term Facility Agent;**
- (7) **BANK OF CHINA LIMITED, MACAU BRANCH in its capacity as Revolving Credit Facility Agent;**
- (8) **BANK OF CHINA LIMITED, MACAU BRANCH in its capacity as Intercreditor Agent; and**
- (9) **BANK OF CHINA LIMITED, MACAU BRANCH in its capacity as Security Agent.**

WHEREAS:

- (A) The Senior Secured Creditors have agreed, subject to the terms and conditions contained in the Senior Finance Documents, to make available to the Company certain loan facilities for the purpose of the Projects, the Cotai Project and for general corporate purposes and/or to enter into other agreements or arrangements associated therewith.
- (B) The parties have agreed to enter into this Agreement to set out certain terms and conditions which are common to all the Facility Agreements and to agree certain terms and conditions upon and subject to which the Senior Secured Creditors shall or may enjoy, exercise or enforce their rights, discretions and remedies under the Senior Finance Documents.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, except as otherwise defined herein or to the extent the context otherwise requires, capitalised terms used shall have the following meanings:

"Acceptable Bank" means:

- (a) a bank notified by the Company to the Security Agent which:
 - (i) is licensed by the Hong Kong Monetary Authority, the Monetary Authority of Singapore, the Financial Supervisory Commission in Taiwan, the Office of the Superintendent of Financial Institutions in Canada, the Federal Reserve System in the United States of America and/or the Financial Services Agency in Japan; and
 - (ii) has, at all times, general obligations rated at least BBB-, Baa3 or BBB from one or more of S&P, Moody's or Fitch respectively;
- (b) any of Banco Comercial de Macau, S.A., Banco Espirito Santo Asia Limited, Banco Nacional Ultramarino, S.A., Bank of China Limited, Macau Branch, Industrial and Commercial Bank of China (Macau) Limited or Tai Fung Bank Limited; or
- (c) any bank which is confirmed by the Security Agent (acting reasonably) as acceptable (including any bank confirmed by the Security Agent or its predecessor as acceptable prior to the Fourth Amendment Effective Date).

"Account" means an account:

- (i) held in Macau, Hong Kong, the United States or any other jurisdiction, and on terms, reasonably acceptable to the Security Agent, by a member of the Restricted Group with an Acceptable Bank; and
- (ii) subject to Liens in favour of the Security Agent in form and substance satisfactory to the Security Agent.

"Account Bank" means, in relation to an Account, the bank with which the Account is maintained.

"Account Bank Notices and Acknowledgements" mean the notices and acknowledgements to be delivered to and executed by each Account Bank in respect of each Account in accordance with the Charges over Accounts and this Agreement.

"Acquisition Agreement" has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

"Additional Facility Agent" means:

- (a) each bank or financial institution appointed as a facility agent for Additional Lenders under an Additional Lender Facility Agreement and which has executed and delivered to the Intercreditor Agent:
 - (i) a duly completed Agent's Deed of Accession; and
 - (ii) a duly completed Finance Party Accession Undertaking executed by such party, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

each of which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors; or

- (b) each successor to any such bank or financial institution appointed in accordance with this Agreement.

"Additional Lender Facility" means each term loan facility and each revolving credit facility provided by the Additional Lenders to the Company.

"Additional Lender Facility Agreement" means an agreement between the Additional Lenders, the Additional Facility Agent and the Company for the provision of the Additional Lender Facility.

"Additional Lender Facility Availability Period" means, in relation to the Additional Lender Facility, the period specified in respect thereof in Clause 4.4 (*Additional Lender Facility Availability Period*).

"Additional Lender's Accession Deed" means a deed of accession in substantially the form set out in Schedule 14 (*Form of Additional Lender's Accession Deed*);

"Additional Lenders" means the parties who have agreed to provide the Company with loan facilities permitted by paragraph 2.1(f) of Part B of Schedule 5 (*Covenants*) and who have each executed and delivered to the Intercreditor Agent:

- (a) a duly completed Additional Lender's Accession Deed; and
- (b) a duly completed Finance Party Accession Undertaking executed by such party, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent).

each of which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors.

"Additional Lending Group" means, with respect to an Additional Lender Facility Agreement, the Additional Lenders party to such Additional Lender Facility Agreement, acting as a lending group in accordance with, and subject to the decision making rules under, such Additional Lender Facility Agreement.

"Advance" means an advance (as from time to time reduced by repayment or prepayment) made or to be made under a Facility.

"Advance Date" means the date on which an Advance is required to be made.

"Advance Request" means, in relation to an Advance under the Term Loan Facilities, a request for an Advance in substantially the form set out in Schedule 3 (*Form of Advance Request*) and, in relation to an Advance under the Revolving Credit Facilities, in substantially the form set out in schedule 2 to the Revolving Credit Facility Agreement or the equivalent schedule to the Additional Lender Facility Agreement setting out the form of advance request, as the case may be.

"Advisers" means the Technical Adviser, the Insurance Adviser and the Tax Adviser.

"Affiliate" as applied to any Person, means any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with") as applied to any Person means the power, directly or indirectly, to (a) vote 10% or more of the shares or other securities having ordinary voting power for the election of the Board of Directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise (*provided* that Mr Wong Chi Seng shall not, by virtue of fulfilling either of these requirements alone as a result of the shares held by him in the Company as at the Signing Date or as a result of his role as executive director of the Company, be an Affiliate of the Company).

"Affiliate Agreement" means any agreement entered into by any Obligor with an Affiliate of that Obligor involving expenditures by any party thereto or any other flow of funds of not less than USD1,000,000 or its equivalent, but excluding any agreement entered into between the Company and a Subsidiary Obligor.

"Agent" means the Intercreditor Agent or a Facility Agent, as the case may be.

"Agent's Deed of Accession" means a deed of accession in substantially the form of Part A of Schedule 11 (*Transfers and Accession*).

"Agreed Form" means, in relation to any document, the form most recently initialled for the purposes of identification as such by the Company and the Intercreditor Agent with such changes as the Intercreditor Agent may agree with the Company.

"A. M. Best" means A.M. Best Company or its successor company.

"Ancillary Finance Documents" means:

- (a) the Fee Letters; and
- (b) the Underwriting Agreement.

"Anti-Bribery Laws" has the meaning given to that term in paragraph 38 of Schedule 4 (*Representations and Warranties*).

"Anti-Terrorism Law" means each of:

- (a) Executive Order No. 13224 of September 23, 2001 - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism (the Executive Order);
- (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (commonly known as the USA Patriot Act);
- (c) the Money Laundering Control Act of 1986, Public Law 99-570;
- (d) the International Emergency Economic Powers Act, 50 U.S.C. App. §§ 1701 et seq, the Trading with the Enemy Act, 50 U.S.C. App. §§ 1 et seq, any sanctions, prohibitions or requirements imposed by any U.S. executive order (an "Executive Order") or by any sanctions programme administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury; and
- (e) any similar law, sanction or measure enacted in the United States of America or resolutions adopted by the United Nations Security Council or by law or regulation in the jurisdictions in which any Obligor, any member of the Group or any Excluded Subsidiary conducts any business.

"Approved Corporate Administrative Fees" means, for any Fiscal Year, an amount, when added to any other Corporate Administrative Fees paid by or on behalf of the Company during such Fiscal Year, as does not exceed 50% of the corporate administrative overhead costs incurred by Wynn Resorts during such Fiscal Year in relation to its management of the Wynn Resorts Group.

"Approved IP Fees" means the IP Fees as set out in the IP Agreement but without regard to any amendment, variation or supplement, whether pursuant to the terms of the IP Agreement or otherwise, subsequent to the Third Amendment to Intellectual Property License Agreement referred to in the definition thereof in this Clause 1.1.

"Asset Sale" means any Disposition of Property other than:

- (a) the granting of any Lien permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*);
- (b) any Disposition permitted by paragraph 5 of Part B of Schedule 5 (*Covenants*) (provided that, in the case of paragraph 5(a) of Part B of Schedule 5 (*Covenants*), Dispositions of Property thereunder shall be considered "Asset Sales" to the extent of any proceeds thereof not applied to the replacement of Property pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*)).

"Assignment of Rights" means the assignment so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"Assignment of Insurances" means the Assignment of Onshore Insurance Policies dated on or about the date of this Agreement between the Company and the Security Agent.

"Assignments of Reinsurances" means each assignment of Reinsurance so entitled between the relevant Direct Insurer and the Security Agent.

"Auditors" means Ernst & Young LLP or such other firm of independent accountants of international recognised standing as may be appointed by the Company.

"Availability Period" means, as the case may be, the Term Facility Availability Period, the Additional Lender Facility Availability Period or the Revolving Credit Facility Availability Period.

"Available Commitment", in relation to each Lender under each Facility Agreement, has the meaning given in that Facility Agreement.

"Board of Directors" means:

- (a) with respect to a corporation, the board of directors of the corporation;
- (b) with respect to a limited partnership, the board of directors of the general partner of the partnership; and
- (c) with respect to any other Person, the board or committee of such Person serving a similar function.

"Break Costs" means the amount (if any) by which:

- (a) the additional interest which a Lender should have received for the period from the date of receipt by such Lender of all or any part of its participation in an Advance or Unpaid Sum to the last day of the current Interest Period in respect of that Advance or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market (or, in the case of any principal amount or Unpaid Sum denominated in HK dollars, the Hong Kong interbank market) for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period,

provided that Break Costs shall not include any loss of margin.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in the Macau SAR, Hong Kong SAR and New York and, save for the purposes of Clause 3.1.1 (*Drawdown conditions*), London and Singapore.

"Capital Expenditure" means, in relation to any Person, for any period, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant

to a capital lease or a finance lease) of fixed or capital assets (including, without limitation, real property) or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under applicable GAAP.

"**Capital Lease Obligations**" means, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or finance leases under applicable GAAP, and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with applicable GAAP.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all classes of membership interests in a limited liability company, any and all classes of partnership interests in a partnership, any and all equivalent ownership interests in a Person and any and all warrants, rights or options to purchase any of the foregoing.

"**Cash Flow Available for Debt Service**" or "**CFADS**" means, in relation to any period, EBITDA for such period *plus*, without duplication, the sum of:

- (a) decreases in Working Capital for such period; and
- (b) any other non-cash charges,

and *minus*, without duplication, the sum of:

- (c) increases in Working Capital for such period;
- (d) any other non-cash credits;
- (e) the aggregate amount actually paid by each member of the Restricted Group in cash during such period on account of Capital Expenditures;
- (f) the aggregate amount actually paid by each member of the Restricted Group in cash during such period on account of any accrued charges from any prior period; and
- (g) Tax paid by each member of the Restricted Group during such period,

determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Cash Flow Available for Debt Service and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

"**Certificate of Substantial Completion**" means, in relation to the Projects, any "Original Project Certificate of Substantial Completion" or "Expansion Project Certificate of Substantial Completion", each as defined in the Construction Contract.

"Change of Control" means the occurrence of any of the following:

- (a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of any Wynn Obligor to any Person (except as may be permitted by this Agreement or any Security Document and excluding any disposition forming part of a Permitted Cotai Reorganisation);
- (b) the adoption of a plan relating to the liquidation or dissolution of any Wynn Obligor or any successor thereto, but excluding any voluntary liquidation, winding-up, dissolution of, or similar action with respect to, Palo after a Permitted Cotai Reorganisation; or
- (c) a Wynn Event.

"Charge over HK Accounts" means the charge so entitled between the Company and the Security Agent in the Agreed Form.

"Charges over Accounts" means the Pledge over Onshore Accounts, the Charge over HK Accounts, the US Operating Account Control Agreement, the Palo Pledge over Onshore Accounts and the documents granting the Liens referred to in the definition of "Account" in this Clause 1.1.

"Claim Proceeds" means the proceeds of a claim (a "Recovery Claim") against any party to a Project Document (or a Cotai Resort Management Agreement) or any of such party's Affiliates (or any employee, officer or adviser) in relation to the Project Documents (or a Cotai Resort Management Agreement) except for Excluded Claim Proceeds, and after deducting:

- (a) any reasonable expenses which are incurred by any member of the Restricted Group to persons who are not members of the Restricted Group; and
- (b) any Tax incurred and required to be paid by a member of the Restricted Group (as reasonably determined by the relevant member of the Restricted Group on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in relation to that Recovery Claim.

"Code" means the Internal Revenue Code of 1986 of the United States of America, as amended from time to time.

"Common Terms Agreement Amendment Agreement" means the agreement so entitled dated 14 September 2005 between the Company, Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch, Société Générale Asia Limited, Société Générale Hong Kong Branch and certain other financial institutions.

"Common Terms Agreement Fourth Amendment Agreement" means the agreement so entitled dated 31 July 2012 between the parties thereto.

"Common Terms Agreement Second Amendment Agreement" means the agreement so entitled dated 27 June 2007 between the parties thereto.

"Common Terms Agreement Third Amendment Agreement" means the agreement so entitled dated 8 September 2009 between the parties thereto.

"Commonly Controlled Entity" means an entity, whether or not incorporated, which is under common control with any Obligor within the meaning of section 4001 of ERISA or is part of a group that includes such Person and that is treated as a single employer under section 414 of the Code.

"Company Share Pledge" means the pledge over shares in the Company dated on or about the date of this Agreement between Wynn HK, Wynn International, the Company and the Security Agent.

"Company's CP Satisfaction Date Certificate" has the meaning given in paragraph 6 of Part A of Schedule 2 (*Conditions Precedent*).

"Compensation Proceeds Account" means the account so designated in Schedule 6 (*Accounts*).

"Completion Memorandum" has the meaning given in the Common Terms Agreement Second Amendment Agreement.

"Completion Request" has the meaning given in the Common Terms Agreement Fourth Amendment Agreement.

"Compliance Certificate" means a certificate in substantially the form set out in Schedule 15 (*Form of Compliance Certificate*).

"Concession Contract" means the concession contract dated 24 June 2002 between the Macau SAR and the Company for the operation of games of chance and other games in casinos in the Macau SAR.

"Concession Contract Performance Bond" means the guarantee to be provided under article 61 of the Concession Contract.

"Confidentiality Undertaking" means a confidentiality undertaking in substantially the form set out in Part C of Schedule 11 (*Transfers and Accession*) or any other form agreed between the Company and the Intercreditor Agent.

"Construction Contract" means the amended and restated construction contract dated 14 September 2005 between the Prime Contractor and the Company for the construction of the Original Project and the Expansion.

"Construction Contract Direct Agreement" means the Amended and Restated Construction Contract Direct Agreement dated 14 September 2005 between the Prime Contractor, the Company and the Security Agent in the Agreed Form.

"Construction Disbursement Account" means the account so designated in Schedule 6 (*Accounts*).

"**Construction Period Insurances**" means the insurances identified as such in Appendix 1 (*Construction Period Insurances*) to Schedule 7 (*Insurance*) and effected in accordance with the terms of Schedule 7 (*Insurance*).

"**Contractors**" means any architects, consultants, designers, contractors, suppliers or any other Persons party to a Major Project Document and engaged by the Company or any other member of the Restricted Group in connection with the design, engineering, development, construction, installation, maintenance or operation of either Project (including the Prime Contractor).

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

"**Corporate Administrative Fees**" means any fees payable by the Company to Wynn Resorts pursuant to the Corporate Administrative Fees Agreement in respect of any corporate administrative overhead costs incurred by Wynn Resorts in relation to its management of the Wynn Resorts Group.

"**Corporate Administrative Fees Agreement**" means the agreement dated as of 1 January 2007 between the Company and Wynn Resorts regarding, among other things, the payment of the Company's portion of any Corporate Administrative Fees.

"**Corporate Services Provider**" means Wynn Resorts in its capacity as a party to the Corporate Administrative Fees Agreement.

"**Cotai Land Concession Contract**" means the land concession contract agreed to by and between Palo, the Company and the Macau SAR dated 2 May 2012 pursuant to Dispatch number 16/2012, and includes any novation, assignment, transfer or other Disposition to the Company or replacement thereof in the name of the Company in connection with a Permitted Cotai Reorganisation.

"**Cotai Mortgage**" means the mortgage relating to the Cotai Site to be entered into between Palo (or, if Palo's interest in the Cotai Site is transferred to the Company pursuant to a Permitted Cotai Reorganisation, the Company) and the Security Agent.

"**Cotai Opening Date**" means the date upon which all Licenças de Ocupação required pursuant to applicable Legal Requirements in respect of the Cotai Project have been issued by the Macau SAR and the Cotai Project is fully open for business to the general public.

"**Cotai Power of Attorney**" means the irrevocable power of attorney to be granted by Palo (or, if Palo's interest in the Cotai Site is transferred to the Company pursuant to a Permitted Cotai Reorganisation, the Company) in favour of the Security Agent in connection with the Cotai Mortgage.

"**Cotai Project**" means a luxury hotel resort, retail and entertainment complex and casino facilities currently known as "Wynn Cotai" to be designed, developed, constructed, operated and maintained on land leased under the Cotai Land Concession Contract (excluding any Excluded Project located on a portion of the Cotai Site).

"Cotai Resort Management Agreement" means any agreement entered into by the Company and/or Palo (that does not conflict with the Cotai Land Concession Contract and all other applicable Legal Requirements) with an Excluded Subsidiary or other third party in connection with the use by such Excluded Subsidiary or other third party of a portion of the Cotai Site for the purposes of an Excluded Project.

"Cotai Site" means the land described in the Cotai Land Concession Contract.

"Cotai Site Easements" means the easements appurtenant, easements in gross, licence agreements and other rights running for the benefit of Palo (or, if Palo's interest in the Cotai Site is transferred to the Company pursuant to a Permitted Cotai Reorganisation, the Company) and/or appurtenant to the Cotai Site.

"Cotai Site Facilities" means

- (a) the Cotai Site; and
- (b) the Project Works (whether completed or uncompleted) in respect of the Cotai Project.

"CP Satisfaction Date" means the date on which all conditions precedent set out in Part A of Schedule 2 (*Conditions Precedent*) have been satisfied in accordance with sub-clause 2.1.2 of Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*).

"Current Assets" means, at any date, all amounts (other than cash) which would, in conformity with applicable GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a balance sheet of the Restricted Group at such date prepared on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Current Assets and (ii) is in any way derived from or attributable or otherwise connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

"Current Liabilities" means, at any date, all amounts that would, in conformity with applicable GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a balance sheet of the Restricted Group at such date prepared on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of reducing Current Liabilities and (ii) is in any way derived from or attributable or otherwise connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof), but excluding:

- (a) the current portion of any Funded Debt of any member of the Restricted Group; and
- (b) without duplication of paragraph (a) above, all Financial Indebtedness consisting of Revolving Credit Facilities Advances to the extent otherwise included therein.

"**Debenture**" means the debenture so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"**Decision**" means the giving of a consent, the making of an agreement or the exercise of any other right, power, discretion or determination in respect of any matter which, under this Agreement or any other Senior Finance Document, requires such consent, agreement or exercise to be given or made by more than one Senior Secured Creditor or by the Required Lenders.

"**Decision Date**" has the meaning given in Clause 33.1 (*Notices of Required Decisions*).

"**Deed of Appointment and Priority**" means the deed so entitled dated on or about the date of this Agreement between, among others, the Lenders, the Performance Bond Provider, the Company, the Agents and the Security Agent.

"**Default**" means an Event of Default or any event or circumstance specified in Schedule 10 (*Events of Default*) hereto which would become (with the expiry of a grace period, the giving of notice, the making of any determination as permitted under the Senior Finance Documents or any combination of any of the foregoing) an Event of Default.

"**Derivatives Counterparty**" has the meaning given in paragraph 6 of Part B of Schedule 5 (*Covenants*).

"**Diamond Completion Date**" means the date of completion of the Diamond Expansion as notified to the Intercreditor Agent by the Company.

"**Diamond Construction Contract**" means the contract for the design, engineering and construction of the Diamond Expansion to be entered into by the Company and the Prime Contractor (or any of its Affiliates).

"**Diamond Expansion**" means that part of the Projects which, as of the Second Amendment Signing Date, is being constructed on the site of the above-ground parking garage comprised in the Original Project and is contemplated to include the 40 floor Wynn Diamond suites, a parking facility, restaurants, retail space and gaming areas.

"**Diamond Opening Date**" means the date upon which all Licenças de Ocupação required pursuant to applicable Legal Requirements in respect of the Diamond Expansion have been issued by the Macau SAR and the Diamond Expansion is fully open for business to the general public.

"**Direct Agreements**" means each of the following documents:

- (a) the Gaming Concession Consent Agreement;
- (b) the Land Concession Consent Agreement;
- (c) the Construction Contract Direct Agreement;
- (d) the PASA Direct Agreement;

- (e) the Account Bank Notices and Acknowledgements; and
- (f) the Insurer Notices and Acknowledgements.

"Direct Insurances" means a contract or policy of insurance of any kind from time to time taken out or effected by, on behalf of or in favour of the Company or any other member of the Restricted Group (whether or not in conjunction with any other person) with one or more insurers in accordance with the terms of Schedule 7 (*Insurance*).

"Direct Insurer" means the insurer(s) with whom a Direct Insurance is placed from time to time in accordance with Schedule 7 (*Insurance*).

"Disposition" means, with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (whether legal or equitable); and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"Disqualified Stock" means any Capital Stock or other ownership or profit interest of any Obligor that any Obligor is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect thereof for consideration other than Capital Stock (other than Disqualified Stock).

"EBITDA" means, in relation to any period, the Net Income of the Restricted Group for such period *plus*, without duplication and to the extent reflected as a charge in the Company's statement of such Net Income for such period, the sum of:

- (a) income Tax expense (whether or not paid during such period) other than Tax on gross gaming revenue;
 - (b) amortization or write-off of debt discount and debt issuance costs and interest, commissions, discounts and other fees and charges associated with Financial Indebtedness (including the Advances);
 - (c) depreciation and amortization expense;
 - (d) amortization of intangibles (including goodwill);
 - (e) an amount equal to the aggregate net non-cash loss on the Disposition of Property during such period (other than sales of inventory in the ordinary course of business);
 - (f) any extraordinary expenses or losses; and
 - (g) any foreign currency translation losses,
- and *minus*, without duplication and to the extent included in the statement of such Net Income for such period, the sum of:
- (h) interest income;

- (i) an amount equal to the aggregate net non-cash gain on the Disposition of Property during such period (other than sales of inventory in the ordinary course of business);
- (j) any extraordinary income or gains;
- (k) any foreign currency translation gains; and
- (l) any upfront premium or similar income or gains derived from, or in connection with the grant of, any Subconcession, all (including Net Income) as determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing EBITDA and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof) and otherwise in accordance with applicable GAAP.

"ECF Percentage" means, with respect to any period:

- (a) 50% of the Excess Cash Flow if the Leverage Ratio as of the last day of such period is greater than 4:1; or
- (b) zero if the Leverage Ratio as of the last day of such period is 4:1 or less.

"Effective Date" has the meaning given in the Common Terms Agreement Second Amendment Agreement.

"Eminent Domain Proceeds" means all amounts and proceeds (including monetary instruments) received in respect of any Event of Eminent Domain relating to any member of the Restricted Group or any of its assets, including either Project, less any costs or expenses incurred by any member of the Restricted Group or its agents in collecting such amounts and proceeds.

"Enforcement Notice" has the meaning given in the Deed of Appointment and Priority.

"Enforcement Proceeds" means all moneys received or recovered by the Security Agent after the Security has become enforceable in accordance with the terms of the Security Documents from the exercise or enforcement of the Security.

"Environment" means land, including any natural or man-made structures; water; and air.

"Environmental Claim" means any formal claim by any Person as a result of or in connection with any material violation of Environmental Law which claim could reasonably be expected to give rise to any remedy or penalty (whether interim or final) or liability for any member of the Restricted Group or any Senior Secured Creditor (in its capacity as such in the transactions contemplated by the Senior Finance Documents).

"Environmental Law" means any law or regulation of the Macau SAR with regard to:

- (a) harm to the health of humans; or
- (b) the pollution or protection of the Environment.

"Environmental Licence" means any material permit, licence, approval, registration, notification, exemption or any other authorisation required under any Environmental Law.

"Equator Principles" means the voluntary set of guidelines for determining, assessing and managing environmental and social risk in project financing promoted and published by the International Finance Corporation and first adopted by other financial institutions on or about 4 June 2003.

"Equity" means, at any time, the aggregate of the US dollar equivalents of:

- (a) the amounts paid up by the Shareholders by way of subscription for shares in the Company; and
- (b) the amounts advanced to the Company and outstanding at such time by way of Shareholder Loans.

"Equity Issuance" means:

- (a) any allotment or issuance (or the entering into by the Company or any other member of the Restricted Group of any agreement to allot or issue), or any grant to any Person of any right (whether conditional or unconditional) to call for or require the allotment or issuance of, any share or equity interest, or other securities (including without limitation bonds, notes, debentures, stock or similar instrument) which are convertible (whether at the option of the holder(s) thereof, the Company or otherwise) into shares or equity interests in the Company or other member of the Restricted Group, or any depositary receipt(s) in respect of any such share or equity interest; or
- (b) any grant of any option, warrant or other right of acquisition in respect of any such share, equity interest, other security or depositary receipt.

provided that for the avoidance of doubt, "Equity Issuance" shall not include (i) any secondary sales of any shares, equity interests or other securities of the Company or any other member of the Restricted Group by any or all of the holders of such shares, equity interests or other securities or (ii) any allotment or issuance or other grant to the Company or any other member of the Restricted Group of shares, equity interests or other securities in a Subsidiary Obligor.

"Equity Issuance Proceeds" means the amount of the proceeds (if not in cash, the monetary value thereof) of any Equity Issuance after deducting:

- (a) fees and expenses reasonably incurred in connection with such Equity Issuance by the Company or other member of the Restricted Group; and
- (b) any Taxes incurred or required to be paid by the Company or other member of the Restricted Group in connection with such Equity Issuance (as reasonably determined by the Company, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"ERISA" means the Employee Retirement Income Security Act of 1974 of the United States of America, as amended from time to time.

"Event of Default" means any event or circumstance set out in Schedule 10 (*Events of Default*).

"Event of Eminent Domain" means, with respect to any Property:

- (a) any compulsory transfer or taking by condemnation, seizure, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking or confiscation of such Property or the requisition of the use of such Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of any Governmental Authority having jurisdiction; or
- (b) any settlement in lieu of paragraph (a) above.

"Event of Loss" means, with respect to any property or asset (tangible or intangible, real or personal), any of the following:

- (a) any loss, destruction or damage of such property or asset;
- (b) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset; or
- (c) any settlement in lieu of paragraph (b) above.

"Excess Cash Flow" means, in relation to any period, CFADS for such period *plus*, without duplication the US dollar equivalents of:

- (a) to the extent included in Net Income for such period, interest income received during such period,
- minus*, without duplication, the US dollar equivalents of:
- (b) the aggregate amount of Financing Costs paid by the Company or any other member of the Restricted Group in cash during such period;
 - (c) the aggregate amount of all prepayments of Advances under the Revolving Credit Facilities during such period to the extent accompanying permanent voluntary reductions of the commitments thereunder and all voluntary prepayments of Term Loan Facility Advances during such period;
 - (d) the aggregate amount of all scheduled principal payments of the Company under the Facility Agreements made during such period (other than in respect of any Revolving Credit Facility to the extent there is not an equivalent

permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the Company would not be able to reborrow all or any of the amount so prepaid); and

- (e) the aggregate of all other scheduled payments of any Financial Indebtedness permitted to be incurred by a member of the Restricted Group pursuant to paragraphs 2.1(e) and 2.1(f) of Part B of Schedule 5 (*Covenants*) falling due and any voluntary prepayments thereof made during such period (other than in respect of any overdraft or revolving facility to the extent there is not an equivalent permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the relevant member of the Restricted Group would not be able to reborrow all or any of the amount so prepaid),

determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Excess Cash Flow and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

"Excluded Claim Proceeds" means:

- (a) any proceeds of a Recovery Claim which the Company notifies the Intercreditor Agent are, or are to be, applied:
- (i) to satisfy (or reimburse a member of the Restricted Group which has discharged) any liability, charge or claim upon a member of the Restricted Group by a person which is not a member of the Restricted Group; or
 - (ii) in the replacement, reinstatement and/or repair of assets of members of the Restricted Group which have been lost, destroyed or damaged,
- in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are deposited into and retained in an Account pending such application and are so applied within 6 months, or such longer period as the Intercreditor Agent may agree, after receipt; and
- (b) any proceeds of a Recovery Claim or Recovery Claims in respect of a Project Document or Project Documents (other than any Major Project Document and other than any proceeds referred to in paragraph (a) above) not exceeding an aggregate amount equal to USD25,000,000 (or its equivalent) during the period commencing on the Fourth Amendment Effective Date and ending on (and including) the Release Date.

"Excluded Project" means any gaming, hotel or resort related business, development or undertaking of any kind (including any business, development or undertaking referred to in clause (c) of the definition of Permitted Businesses) in the Macau SAR (other than the Projects or the Cotai Project) and, save as contemplated by any Resort Management Agreement therefor in the case of the Company or Palo, neither

involving nor permitting any claim, interest, liability, right of recourse of any kind in connection therewith against or in any member of the Restricted Group or its assets, including the Projects and the Cotai Project. For the avoidance of doubt, an Excluded Project may be located on a portion of the Cotai Site *provided that* to the extent any such Excluded Project located on a portion of the Cotai Site is funded by the proceeds of any Advance, such funding is applied solely towards the financing or refinancing of the development costs incurred in relation to such Excluded Project (it being agreed that such development costs include, but are not limited to, costs and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest), and *further provided that* the following additional conditions are met prior to the earlier of entry into of any contract for and the commencement of the construction of an Excluded Project on the Cotai Site:

- (i) the entire Cotai Site shall remain part of the Project Security and subject to the Cotai Mortgage and there shall be no adverse effect on the validity or enforceability of, or the effectiveness or ranking of any Security of the Finance Parties as a result of the Excluded Project being located on the Cotai Site;
- (ii) the development, operation and maintenance of such Excluded Project:
 - (A) complies in all material respects with all applicable Legal Requirements (including, without limitation, Environmental Laws), the Cotai Land Concession Contract and the Concession Contract; and
 - (B) does not materially interfere with or materially obstruct (or otherwise have any material adverse effect on) the development, operation and maintenance of the Cotai Project; and
- (iii) any claim, interest or liability, or right of recourse of any kind of any counterparty to any Resort Management Agreement, in respect of such Excluded Project against or in the Company, Palo or any other member of the Restricted Group or any of their respective assets (including, without limitation, the Projects and the Cotai Project) is limited to an aggregate amount equal to all revenues derived by the Company (or, as the case may be, Palo) in respect of that Excluded Project and any other assets of the Company (or, as the case may be, Palo) comprised in that Excluded Project (and which do not form part of and are not necessary to ensure to the Restricted Group the full benefit of any Project or the Cotai Project).

"**Excluded Subsidiary**" means a Subsidiary of the Company exclusively engaged in the development, financing, ownership, leasing or operation of Excluded Projects on terms which, save as contemplated by any Resort Management Agreement to which such Subsidiary is party in the case of the Company, neither involve nor permit any claim, interest, liability, right of recourse of any kind in connection therewith against or in any member of the Restricted Group or its assets, including either of the Projects.

"**Expansion**" means that part of the Projects comprised in the "Expansion Project Casino" as defined in the Construction Contract as at the Third Amendment Signing Date, but excluding the Diamond Expansion.

"**Expansion Opening Date**" means the date upon which all Licenças de Ocupação required pursuant to applicable Legal Requirements in respect of the Expansion have been issued by the Macau SAR and the Expansion is fully open for business to the general public.

"**Facility**" means any of:

- (a) the Term Loan Facilities; or
- (b) the Revolving Credit Facilities.

"**Facility Agents**" means the Term Facility Agent, the Revolving Credit Facility Agent and each Additional Facility Agent.

"**Facility Agreements**" means:

- (a) the Term Facility Agreement;
- (b) the Revolving Credit Facility Agreement; and
- (c) each Additional Lender Facility Agreement.

"**Facility Office**" means the office or offices notified by a Senior Secured Creditor to the relevant Facility Agent under the Facilities and by the relevant Facility Agent to the Company and the Intercreditor Agent in writing on or before the date it becomes a Senior Secured Creditor (or, following that date, by not less than 10 Business Days' written notice) as the office or offices through which it shall perform its obligations under the relevant Facility.

"**FCPA**" has the meaning given to that term in paragraph 38 of Schedule 4 (*Representations and Warranties*).

"**Fee Letters**" means each of the fee letters entered into from time to time between the Company on the one hand and any of the Agents and the Security Agent on the other hand.

"**Final Repayment Date**" means:

- (a) in relation to the Term Facility, the sixth anniversary of the Fourth Amendment Effective Date; and
- (b) in relation to an Additional Lender Facility providing for a term loan, the date set forth in the applicable Additional Lender Facility Agreement.

"**Finance Document**" has the meaning given in the Deed of Appointment and Priority.

"**Finance Party Accession Undertaking**" has the meaning given in the Deed of Appointment and Priority.

"Financial Indebtedness" means, in relation to any Person at any date, without duplication:

- (a) all indebtedness of such Person for borrowed money;
- (b) all obligations of such Person for the purchase price of Property or services to the extent the payment of such obligations is deferred for a period in excess of 90 days (other than trade payables incurred in the ordinary course of such Person's business);
- (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments;
- (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (unless the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property);
- (e) all Capital Lease Obligations (to the extent treated as finance or capital lease obligations in accordance with applicable GAAP) or Synthetic Lease Obligations of such Person;
- (f) any indebtedness of such Person for or in respect of receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis or on a basis where recourse is limited solely to warranty claims relating to title or objective characteristics of the relevant receivables);
- (g) any indebtedness of such Person in respect of any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) all indebtedness of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities;
- (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person;
- (j) all obligations of such Person in respect of Swap Agreements or any other derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;
- (k) all Guarantee Obligations of such Person in respect of obligations (whether of such Person or another person) of the kind referred to in paragraphs (a) through (j) above;
- (l) all obligations of the kind referred to in paragraphs (a) through (k) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation; and
- (m) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries.

"**Financial Model**" means the computer model, stored on computer disc(s), and consisting of algorithms as set out on the print-out from such disc(s), each to be initialled at the Second Amendment Signing Date by the Intercreditor Agent and the Company solely for the purposes of identification.

"**Financing Costs**" means:

- (a) interest, fees, commissions, costs and expenses payable by the Company under the Senior Finance Documents;
- (b) interest, fees, commissions, costs and expenses payable by the Company under the Performance Bond Facility;
- (c) amounts payable by the Company under Clause 10 (*Changes to the Calculation of Interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) and Clause 13 (*Currency and Other Indemnities*);
- (d) any other amounts of interest, fees, commissions, discounts, prepayment penalties or premiums and other finance payments payable in respect of Financial Indebtedness permitted to be incurred by a member of the Restricted Group pursuant to paragraphs 2.1(c) and 2.1(f) of Part B of Schedule 5 (*Covenants*);
- (e) any amounts of dividends, disbursements or other payments payable for the purpose of paying any amount with respect to Guaranteed WML Debt (pursuant to paragraph 6.1(v) of Part B of Schedule 5 (*Covenants*));
- (f) net amounts payable by the Company under any Hedging Agreement; and
- (g) any value added or other taxes payable by the Company or any other member of the Restricted Group in respect of paragraphs (a) through (f) above and, save to the extent already included in paragraph (c) above, any withholding tax on a party under a Senior Finance Document, the Performance Bond Facility or any other agreement relating to the provision of Financial Indebtedness referred to above in respect of which the Company or any other member of the Restricted Group has an obligation to gross up.

"**FinCEN**" means the Financial Crimes Enforcement Network of the U.S. Department of the Treasury.

"**Fiscal Quarter**" means any one of the four consecutive three calendar month periods comprised in a Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Company, the Restricted Group and the Wynn Obligors ending on 31 December of each calendar year.

"**Fitch**" means Fitch Ratings Ltd.

"Floating Charge" means the charge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"Fourth Amendment Effective Date" has the meaning given in the Common Terms Agreement Fourth Amendment Agreement.

"Fourth Amendment Effective Date Fee Letters" means the Fee Letters referred to in Schedule 1 (*Conditions Precedent*) of the Common Terms Agreement Fourth Amendment Agreement.

"Fourth Amendment Signing Date" means the date of the Common Terms Agreement Fourth Amendment Agreement.

"Fundamental Term" means, in respect of a Senior Finance Document:

- (a) the definitions of Required Lenders and Fundamental Term in Clause 1.1;
- (b) the provisions setting out the date for, or the amount of, or the currency of, any payment of principal (other than Clause 8.2 (*Voluntary Prepayment of the Term Loan Facilities*) of this Agreement) or interest under a Senior Finance Document or any interest rate hedging payment to a Hedging Counterparty (but excluding, in each case, any amendment bringing forward the date of any such interest rate hedging payment or increasing the amount of any such interest rate hedging payment);
- (c) Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) (save in relation to the identity of the opinion providers as set forth in paragraph 14 of Part A of Schedule 2 (*Conditions Precedent*) and paragraph 30 of Part A of Schedule 2 (*Conditions Precedent*));
- (d) the provisions setting out the amount of a Lender's Available Commitment under a Facility (otherwise than by a transfer in accordance with the terms of this Agreement) or the duration of its availability or any additional obligation on a Lender to lend money or provide any other form of credit;
- (e) a term which expressly requires the consent of each Lender or Senior Secured Creditor;
- (f) the provisions relating to the release of any Security (unless permitted under this Agreement or any other Senior Finance Document) or the priority or ranking of such Security or the Secured Obligations (and any other provisions which, if amended, would have the effect of changing the priority or ranking thereof);
- (g) the provisions dealing with the order of distribution on partial payment by the Company or the proceeds of Security;
- (h) paragraph 2.1(c) of Part B of Schedule 5 (*Covenants*) or paragraph 2.1(f) of Part B of Schedule 5 (*Covenants*);
- (i) Clause 25 (*Sharing Among the Senior Secured Creditors*); and
- (j) Clause 33 (*Intercreditor Arrangements*).

Notwithstanding the above, unanimity among the Lenders and Hedging Counterparties shall not be required with respect to any changes, additions, deletions, modifications or supplements (herein "changes") comprised in any amendment to the Deed of Appointment and Priority made in accordance with clause 24.1(c) (*Required Consents*) thereof with respect to subparagraphs (a), (e), (f), (g), (h) and (j) above and any Decision related to such changes shall be effected pursuant to subparagraph (a) of the definition of Required Lenders (and as if a Hedging Voting Right Event had occurred and was continuing in relation to each Hedging Counterparty) provided that, in each case, the Senior Secured Creditors' rights, benefits and interests in respect of the First Ranking Liabilities (as defined in the Deed of Appointment and Priority) and the Security, the enforcement thereof and the priority and ranking of their claims in respect thereof and the subordination thereto of all other claims, remain unaffected by any such changes.

"**Funded Debt**" means, in relation to any Person, all Financial Indebtedness of such Person of the types described in sub-clauses (a) through (g) of the definition of "Financial Indebtedness" in this Clause.

"**Funds**" means any funds that are unconditionally available and have been made available, raised, procured or obtained in a manner that does not breach the terms of this Agreement including such amount of Financial Indebtedness permitted to be created, incurred, assumed or suffered to exist pursuant to paragraph 2.1(e) of Part B of Schedule 5 as, when aggregated with all other amounts of Financial Indebtedness permitted to be created, incurred, assumed or suffered to exist pursuant to paragraph 2.1(e), does not exceed USD500,000,000 or its equivalent.

"**GAAP**" means, in respect of the Company and other members of the Restricted Group, IFRS and, in respect of any Wynn Obligor, generally accepted accounting principles in the United States of America as in effect from time to time.

"**Gaming Concession Consent Agreement**" means the Agreement Relating to Security (with the Exclusion of Land Concession and Immovable Property) dated on or about the date of this Agreement between the Government of the Macau SAR, the Company and the Security Agent and the Supplement in respect thereof dated 14 September 2005.

"**Governing Documents**" means, collectively, as to any Person, the certificate of incorporation, the memorandum and articles of association or bylaws, any shareholders agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation or constituent documents applicable to such Person.

"**Governmental Authority**" means, as to any Person, the government of the Macau SAR, any other national, state, provincial or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, in each case having jurisdiction over such Person, or any arbitrator with authority to bind such Person at law.

"Group" means the Company and each of the Company's Subsidiaries (other than any Excluded Subsidiary) for the time being (including, without limitation, Palo and any other Subsidiary of the Company which becomes an Obligor pursuant to paragraph 27 of Part A of Schedule 5 (Covenants)).

"Guarantee" means the guarantee formerly entitled the "Wynn Pledgors' Guarantee" dated on or about the date of this Agreement between Wynn Asia 2, Wynn Holdings, Wynn HK, Wynn International, Palo and the Security Agent, as amended, restated, supplemented and novated by, *inter alia*, the Guarantee Third Deed of Amendment and Acknowledgement.

"Guarantee Third Deed of Amendment and Acknowledgement" has the meaning given in the Common Terms Agreement Fourth Amendment Agreement.

"Guaranteed Date of Substantial Completion" means, in respect of the Original Project, the "Guaranteed Date of Original Project Substantial Completion" and, in respect of the Expansion, the "Guaranteed Date of Expansion Project Substantial Completion", each as defined in the Construction Contract.

"Guaranteed WML Debt" means WML Debt in respect of which the Company or any Obligor has incurred, assumed or suffered to exist any Guarantee Obligations in compliance with Clause 2.1(i) of Part B of Schedule 5 (Covenants) of this Agreement.

"Guarantee Obligation" means any guarantee, indemnity, letter of credit or other legally binding assurance against loss granted by one Person in respect of any Financial Indebtedness or other liability or obligation of another Person, or any agreement to assume any Financial Indebtedness of any other Person or to supply funds or to invest in any manner whatsoever in such other Person by reason of Financial Indebtedness of such Person; *provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business.* The amount of any Guarantee Obligation of any guaranteeing Person shall be deemed to be the lower of (1) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (2) the maximum amount for which such guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation (unless such primary obligation and the maximum amount for which such guaranteeing Person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing Person's maximum reasonably anticipated liability in respect thereof as determined by the Company in good faith).

"Hazardous Substance" means radioactive materials, asbestos and other substances defined as "hazardous" or of a similar nature under any Environmental Law.

"Hedging Agreements" means any agreement entered into by the Company in accordance with the Hedging Arrangements.

Wynn Resorts, Limited
Wynn PA, Inc.

Appendix 13 – Copies of any interim reports

Does Not Apply

Initials mw